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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Human rights bodies and mechanisms

Fifth session of the Forum on Business and Human Rights: summary of discussions

Note by the Secretariat*

In accordance with Human Rights Council resolutions 17/4 and 26/22, the fifth session of the Forum on Business and Human Rights was held in Geneva from 14 to 16 November 2016. The Forum was chaired by Sergei Alexandrovich Ordzhonikidze and held under the guidance of the Working Group on the issue of human rights and transnational corporations and other business enterprises. The Chair of the Forum prepared a summary of the discussions of the Forum (A/HRC/FBHR/2016/2).

* The document was submitted late to the conference services, without the explanation required under paragraph 8 of General Assembly resolution 53/208 B.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on human rights and international solidarity

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Independent Expert on human rights and international solidarity, Virginia Dandan, prepared pursuant to Council resolution 29/3. The main feature of the present report is the draft declaration on the right to international solidarity, contained in the annex. In the main body of the report, the Independent Expert provides the highlights of the work of the mandate since its establishment in 2005, bringing up to date the milestones that have led to the crafting of the draft declaration and that have advanced awareness of the value of international solidarity both as a principle and as a right, in the light of current developments in world affairs.

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I. Introduction

1. The Human Rights Council appointed Virginia Dandan as Independent Expert on human rights and international solidarity with effect from 1 August 2011. In June 2014, in its resolution 26/6, the Council renewed the mandate until 2017. Ms. Dandan is the second mandate holder.

2. The Independent Expert expresses her thanks to the Member States of the Human Rights Council that have supported her mandate and cooperated with her. She also wishes to express her appreciation to those States that have not supported her mandate but who nevertheless engaged with her in dialogue to voice their positions with regard to the right to international solidarity.

3. The Independent Expert is grateful for the support and assistance she received from the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva and in the regional offices, as well as for the advice and comments from experts of the treaty body system and from special procedure mandate holders. She acknowledges with gratitude the assistance of the legal experts who helped her shape and amend the draft declaration into its current form. She is also grateful to non-governmental organizations (NGOs) for their consistent support, their efforts and contributions to raise awareness of and promote the right to international solidarity. She would like to give credit to and recognize all those who participated in the regional consultations on the draft declaration held in Addis Ababa, Doha, Geneva, Panama City and Suva.

II. Activities undertaken by the mandate holder

A. Summary of activities since the last reporting period[1]

1. Participation in an international expert workshop on international solidarity

4. The Independent Expert was invited by the Centre for Global Cooperation Research to participate in an international expert workshop entitled "International solidarity: yesterday's ideal or emerging key norm?" held on 1 and 2 September 2016 in Berlin. She was requested to speak at the round-table session entitled "Solidarity as a prerequisite of international cooperation: the way forward." Among the key issues for discussion at the session were inferring from pertinent documents that international solidarity is an emerging norm in international relations, and the potential of international solidarity in the light of the relationships between interests and norms in international relations, and with regard to diverse cultural and ethical backgrounds. As she was unable to travel to the conference owing to sudden illness, the Independent Expert's paper was distributed among the panellists of the round table as material for discussion in her absence. Their comments on and discussion of her paper are contained in the published report of the workshop.[2] Her paper was also published in the monthly publication of the Centre for Global Cooperation Research.[3]

2. Report to the seventy-first session of the General Assembly

5. The Independent Expert submitted her thematic report to the General Assembly (A/71/280) for consideration at its seventy-first session. In her statement to the Assembly, she discussed the regional consultations on the proposed draft declaration on the right to international solidarity that had been held over the course of 2015 and 2016, as summarized in her previous report to the Human Rights Council (A/HRC/32/43).

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[1] See the Independent Expert's previous report to the Human Rights Council (A/HRC/32/43).

[2] See www.sef-bonn.org/fileadmin/Die_SEF/Veranstaltungen/Exp-WS/2016_exp-ws_report_en.pdf.

[3] See Virginia Dandan, "The path to a right to international solidarity", *Foreign Voices*, 2/2016. Available at http://www.sef_bonn.org/fileadmin/Die_SEF/Publikationen/Foreign_Voices/fv_2016-02_dandan.pdf.

6. In her report to the General Assembly, the Independent Expert examined in detail four key issues that had emerged from the discussions held during the regional consultations and that were highly relevant in revising the proposed draft declaration and producing the final version of the draft. She highlighted the following issues: updating the preamble to amplify the legal framework for international solidarity; articulating the conceptualization and nature of the right to international solidarity; taking into account both economic, social and cultural rights and civil and political rights in the consideration of the extraterritorial obligations of States; and identifying which non-State actors are being addressed in the proposed draft declaration, and elaborating their roles as required by the right to international solidarity.

3. Convening a side event at the seventy-first session of the General Assembly

7. While in New York to present her report to the seventy-first session of the General Assembly, the Independent Expert took the opportunity, with the co-sponsorship of the Permanent Mission of Panama to the United Nations, to convene a side event on 20 October 2016 to discuss the significance of international solidarity for a transformative change in global partnerships. The occasion was also an opportunity to engage with Member States and relevant stakeholders on the role that the mandate could play in promoting international solidarity as an indispensable factor in attaining the transformative shift towards the achievement of the 2030 Agenda for Sustainable Development, particularly through Goal 17, which is to strengthen the means of implementation and revitalize the Global Partnership for Sustainable Development. The event featured presentations from a panel of United Nations human right experts and representatives of Member States and civil society.

8. The interactive discussions that followed the presentations focused on:

(a) How States can utilize their human rights treaty obligations as their legal and operational framework to implement their development and environmental policies at the national level;

(b) How existing human rights standards and accountability mechanisms can inform global partnerships;

(c) The role of civil society in promoting international solidarity in global partnerships;

(d) The added value of integrating human rights in international solidarity towards achieving the Sustainable Development Goals.

4. Dialogue with civil society organizations

9. The Independent Expert was invited by the umbrella organization Iniciativas de Cooperación Internacional para el Desarollo to a dialogue with civil society organizations on 17 February 2017 in Madrid. She gave a presentation on the mandate of human rights and international solidarity, tracing the history and evolution of the mandate, and shared her experiences on crafting the draft declaration on the right to international solidarity. In particular, she explained the nature of international cooperation as an obligation of States towards the fulfilment of human rights, and the role of civil society organizations such as NGOs in complementing government efforts in that regard. She stressed that international cooperation is even more important now that the achievement of the Sustainable Development Goals is country-driven.

10. During her visit to Madrid, the Independent Expert also visited a local city government office in order to interact with officials and members of the community regarding their projects to promote the achievement of the Sustainable Development Goals. She took the opportunity to explain to them how a human rights-based approach to development can be integrated into their projects.

5. Participation as keynote speaker at a civil society organization international conference

11. The Independent Expert was invited by CSO Partnership for Development Effectiveness to deliver a keynote address at its international conference, held in Bangkok on 30 and 31 March 2017. The Conference, entitled "Breaking ground, taking roots: the Istanbul Principles @7", brought together representatives from civil society organizations working on development at both the national and international levels. Government officials representing a number of countries were also invited as speakers and discussants at the event. Acknowledging not only their contributions but also their weaknesses and challenges as development actors, civil society organizations affirmed their commitment to take action to improve and be fully accountable for their development practices, guided by Istanbul Principle No. 7, which states that: "CSOs are effective as development actors when they enhance the ways they learn from their experience, from other CSOs and development actors, integrating evidence from development practice and results, including the knowledge and wisdom of local and indigenous communities, strengthening innovation and their vision for the future they would like to see". The Principles were adopted in 2010 by 200 civil society organizations in affirmation of their commitment to improve and be fully accountable for their development practice.[4]

12. The Independent Expert's keynote address was entitled "Wanted and wanting: an enabling environment for civil society effectiveness in the 2030 Agenda". It tackled the issue of the growing trend of shrinking civic space and why that needs to be reversed. Among other things, she pointed out that in paragraph 18 of the outcome document of the second high-level meeting of the Global Partnership for Effective Development Cooperation, held in Nairobi in December 2016, Governments committed to accelerating progress in providing an enabling environment for civil society, including in legal and regulatory terms, in line with internationally agreed rights.[5] She challenged them to apply the standards by which they measure States' development effectiveness to themselves. Those standards are governance, accountability and participation. She also suggested that they should agree on plans for collective action to promote and advance a human rights-based approach to implementing the Istanbul Principles, towards strengthening the development effectiveness and accountability of civil society organizations at the country level.

B. Summary of key activities over the course of the mandate

1. Official country visits conducted by the Independent Expert

13. The Independent Expert conducted her first official country visit to Brazil, from 25 to 29 June 2012, in order to exchange views with the Government and other actors and to gather information on the so-called "solidarity diplomacy" experiences of Brazil, particularly in the context of its international cooperation activities. As she explained in her report (A/HRC/23/45/Add.1), the visit demonstrated the value of best practices as portals to the inherent interface between the policy and practice of international solidarity and the realization of human rights, and how such practices ineluctably lead to desirable outcomes towards the realization of human rights.

14. The Independent Expert visited Morocco and the Non-Self-Governing Territory of Western Sahara from 15 to 20 January 2016. During that visit, she paid particular attention to the nature of the cooperation between Morocco and its external partners, including development assistance cooperation, and the impact of such partnerships on the advancement of human rights. It was the first time that she was able to observe international development cooperation using the lens of the proposed draft declaration on the right to international solidarity on the ground. Her observations in that regard, including

[4] See www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DCD/DAC/EFF(2010)12&docLanguage=En.

[5] See http://effectivecooperation.org/wp-content/uploads/2016/12/OutcomeDocumentEnglish.pdf.

her conclusions and recommendations to Morocco and its development partners, are contained in her mission report to the Council (A/HRC/32/43/Add.1).

15. The Independent Expert visited Norway from 19 to 23 September 2016 to observe how human rights are integrated into the design and implementation of that country's international development cooperation, and the impact of its long-standing commitment to development assistance on the promotion and protection of human rights.

16. At the end of her visit, the Independent Expert acknowledged and commended Norway for its progressive approach to integrating human rights principles in the way it conducts foreign policy, and the country's commitment to upholding the principle of solidarity while implementing the 2030 Agenda. Norway has made targeted efforts to mainstream human rights in development cooperation, especially in the promotion of the principles of non-discrimination, participation and good governance. The Independent Expert encouraged the Government to continue refining its policy of human rights mainstreaming in all aspects of foreign policy. She also encouraged Norway to continue promoting and upholding the Guiding Principles on Business and Human Rights, including in the oil industry. The report of the Independent Expert's country visit to Norway (A/HRC/35/35/Add.1) is submitted to the Council as an addendum to the present report.

2. Attendance and participation in major international conferences

17. The Independent Expert attended and participated in a number of international and regional conferences, seminars and workshops in her capacity as mandate holder on human rights and international solidarity. The major international conferences are listed below. The other events are duly documented in her annual reports to the Human Rights Council and the General Assembly.

(a) United Nations Conference on Sustainable Development (Rio+20), 20-22 June 2012, Rio de Janeiro, Brazil;

(b) Vienna+20: Advancing the Protection of Human Rights, 27-28 June 2013, Vienna;

(c) United Nations summit for the adoption of the post-2015 development agenda, 25-27 September 2015, New York, United States of America;

(d) Twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (COP21), 3-5 December 2015, Paris.

III. Highlights and achievements in the work of the mandate since its establishment, and the evolution of the draft declaration on the right to international solidarity

18. The following is a brief account of the milestones in the work of the mandate on human rights and international solidarity. Together with the previous summary of key activities undertaken, it serves as a record of the history of the mandate since its establishment. The current mandate holder wishes to record in a single document a reference, supported by citation of relevant United Nations documents where available, for those who are interested, but especially for those who are appointed to continue the work of the mandate in the future.

19. The mandate of the Independent Expert on human rights and international solidarity was established in 2005 by the United Nations Commission on Human Rights in its resolution 2005/55. The Human Rights Council, in its resolution 17/6, took over the mandate. The current Independent Expert, Virginia Dandan, assumed the mandate on 1 August 2011. Her term was renewed in June 2014 and will end in July 2017. Ms. Dandan is the second mandate holder on human rights and international solidarity.

A. Groundwork for the development of a right to international solidarity

20. The groundwork for the development of a right to international solidarity began with the submission of a working paper on human rights and international solidarity by Rui Baltazar Dos Santos Alves (E/CN.4/Sub.2/2004/43) to the Sub-Commission on the Promotion and Protection of Human Rights of the Commission on Human Rights, as requested in its resolution 2002/73. One of the conclusions of that paper was that international solidarity as an instrument for the attainment of human rights was a fact of international life that needed new development. In his paper, Mr. Baltazar proposed a preliminary workplan, in which he recommended studying the new international context, the new challenges and the need to define principles, objectives and priorities conducive to clarifying responsibilities in the field of international solidarity and human rights (para. 37 (c)).

21. At its sixty-first session, the Commission, in its resolution 2005/55, established the mandate on human rights and international solidarity and requested the Independent Expert to study the issue and prepare a draft declaration on the right of peoples to international solidarity. Rudi Muhammad Rizki was appointed as the first Independent Expert on human rights and international solidarity.

22. In his first report (E/CN.4/2006/96), Mr. Rizki presented an overview of his approach to the work of the mandate, including the possible main areas of focus, objectives, methodology and preliminary considerations to be refined and developed in subsequent reports. During his second term, he circulated a questionnaire on human rights and international solidarity to States, United Nations departments and bodies, specialized agencies, other international organizations, NGOs in Geneva and the special procedure mandate holders of the Human Rights Council. In his report at the end of his term (A/HRC/15/32), he identified elements of a conceptual and normative framework for human rights and international solidarity, drawing from the responses to the questionnaire and his review of and observations on them, and highlighted significant areas of focus and emerging approaches in international cooperation.

23. The working paper written by Mr. Dos Santos Alves and the work of the first Independent Expert, Mr. Rizki, were inspired by the historical and philosophical foundations and, to a certain extent, the link to international law, of the principle of international solidarity and its value in international relations, which would lay the basis for the right to international solidarity.

B. Shifting focus from the principle of international solidarity to a right to international solidarity

24. In June 2011, the Human Rights Council appointed the second and current Independent Expert on human rights and international solidarity, Virginia Dandan. In her first report to the Human Rights Council (A/HRC/21/44), she outlined the work of the mandate towards the elaboration of a draft declaration. She identified stage one as the work accomplished by Mr. Dos Santos Alves and her predecessor, Mr. Rizki. In August 2011, she began her work on stage two, which entailed an in-depth examination of the relevant issues, principles, standards and norms that would shift the focus from the principle of international solidarity to the right to international solidarity. Consultations with States, independent experts and various stakeholders, including civil society and grass-roots representatives, were to be intensified throughout stage two. Stage three would be devoted to consolidating and analysing the results of the previous two stages, writing and circulating a preliminary text of the draft declaration for consultation, consolidating additional comments and inputs that were received and finalizing the initial draft declaration for submission to the Human Rights Council by 2014.

25. Upon assuming her duties, the current Independent Expert took into account the mandate's tasks set out in relevant resolutions of the Commission on Human Rights and the Human Rights Council. She paid particular attention to the Council resolutions covering the period since her appointment, especially resolution 21/10, which was a milestone in the

history of the mandate, constituting a record of the significant achievements in the work of the mandate up to that point. Notably and for the first time, the Council resolution requested the Independent Expert to report regularly to the General Assembly.

26. In the same resolution, the Council welcomed the holding of an expert workshop on human rights and international solidarity convened by the Independent Expert in Geneva in June 2012, and her participation in the same year in the United Nations Conference on Sustainable Development (Rio+20) and the People's Summit for Social and Environmental Justice in Rio de Janeiro in Brazil. In that resolution, the Council encouraged her engagement in the post-2015 development agenda process, stressing the role of international solidarity as a key element in achieving sustainable and more inclusive development.

C. Expert workshop on human rights and international solidarity

27. The two-day expert workshop on human rights and international solidarity was held in June 2012 in Geneva, under the auspices of the Independent Expert who gathered 26 experts from various regions. Representatives of States, United Nations agencies and NGOs also attended the public segment of the workshop as observers and were invited to participate in the working groups. The discussions in the workshop focused on issues including the content, nature and added value of international solidarity; the definition of international solidarity and a right to international solidarity; the relationships between international solidarity and international cooperation; and looking beyond the Millennium Development Goals. The participants expressed their thoughts freely based on their individual expertise and exchanged views, as summarized in the Independent Expert's report to the Council (A/HRC/21/44/Add. 1).

28. In its resolution 21/10, the Council explicitly spelled out the tasks of the mandate, requesting the Independent Expert, inter alia, to:

(a) Continue to identify areas to be addressed, the main concepts and norms that can form the basis of a framework, and good practices to inform the future development of law and policy with regard to human rights and international solidarity;

(b) Conduct in-depth research and intensive consultations with a view to preparing and sharing with Member States and all other relevant stakeholders a preliminary text of the draft declaration on the right of peoples and individuals to international solidarity;

(c) Continue her work in the preparation of a draft declaration on the right of peoples and individuals to international solidarity and in further developing guidelines, standards, norms and principles with a view to promoting and protecting that right by addressing, inter alia, existing and emerging obstacles to its realization.

29. The Council also took note of the final paper on human rights and international solidarity (A/HRC/21/66) submitted by the drafting group of the Human Rights Council Advisory Committee, working in close cooperation with the Independent Expert, as an input to the process of elaborating a draft declaration on the right of peoples and individuals to international solidarity.

30. The Independent Expert conducted formal and informal consultations with State delegations, United Nations officials, bodies and specialized agencies, independent experts, national human rights institutions, NGOs, academics and local communities, listening to as many people as possible, including those who did not share her views regarding human rights and international solidarity. At the same time, she conducted in-depth research and participated in relevant forums and major events to raise awareness of and promote the right to international solidarity.

D. Consolidation and analysis of data, writing and submission of the proposed draft declaration

31. In its resolution 23/12, the Council reiterated its request for the Independent Expert to continue to work on the preparation of a draft declaration on the right of peoples and individuals to international solidarity and in that connection, to prepare a preliminary text of the draft with a view to eliciting comments and recommendations for the final declaration. Contributions were received within the specified time frame from civil society, United Nations agencies and other experts. Three States eventually submitted their responses to the preliminary text of the draft declaration.

32. The preliminary text was circulated in 2013 and published as an addendum to the Independent Expert's report to the Council at its twenty-sixth session (A/HRC/26/34/Add.1). The insights and input from United Nations agencies and independent experts, including those arising from the 2012 expert workshop, the final paper of the Human Rights Council Advisory Committee, and the comments submitted by NGOs, academics, national human rights institutions and local communities on the preliminary text, were of great value in the preparation of the proposed draft declaration, which was also submitted to the Council at that session (A/HRC/26/34, annex).

33. In that report, the Independent Expert explained that since the document she submitted was prepared even in the absence of comments and inputs from States themselves, she used the word "proposed" in the title of the draft declaration. One of her recommendations in that report was that the Human Rights Council should hold regional consultations on the proposed draft declaration so that the Independent Expert could gather as much input as possible from States and their representatives on the proposed draft declaration. Participants in the regional consultations would include relevant policymakers, decision makers and representatives of Governments, regional United Nations agencies, national human rights institutions and NGOs, and they would be able to effectively examine and discuss the proposed declaration based on their actual work experience. The outputs from the regional consultations would thus be well-informed by direct inputs and comments on the text of the proposed draft declaration. At the end of the consultation cycle, the Independent Expert would consolidate and consider the outputs from all the regional consultations, revise the proposed draft declaration as appropriate, and submit the amended draft declaration for the consideration of the Human Rights Council.

34. The Council noted with appreciation the proposed draft declaration and decided that, in order to obtain further inputs from as many Member States as possible on it, the Independent Expert, with the assistance of OHCHR, would convene regional consultations, consolidate and consider the outputs from all the consultations and submit a report to the Council at its thirty-second session. The Council requested the Independent Expert to submit a revised draft declaration to it and to the General Assembly before the end of her second term in June 2017.

35. The paragraphs that follow contain a brief summary of the contents of the proposed draft declaration, in order to facilitate better appreciation of the final draft declaration on the right to international solidarity, contained in the annex to the present report. The summary also serves as background reference for the comments and notes relating to the revisions on the text of the proposed draft declaration. As indicated above, the full text of the proposed draft declaration is contained in the annex to document A/HRC/26/34.

E. Proposed draft declaration on the right of peoples and individuals to international solidarity

36. In its preambular paragraphs, the proposed draft declaration on the right of peoples and individuals to international solidarity affirms that international solidarity is not limited to international assistance and cooperation, aid, charity or humanitarian assistance. Preambular paragraph 8 succinctly expresses the substantive foundation of the proposed draft declaration when it stresses that international solidarity is a fundamental concept of mutually reinforcing relations among persons, groups and nations, an essential binding

element that underpins global partnerships, a key approach to poverty eradication, and an indispensable component of the efforts to realize all human rights, including the right to development, as well as the Sustainable Development Goals.

37. Articles 1 to 4 define the concept of international solidarity, exemplifying solidarity among States, peoples and individuals, and identify foundational principles and the constituent features of international solidarity, namely, preventive solidarity and international cooperation. Article 4 enumerates the significance of international solidarity in contemporary international law and its general objective.

38. Article 5 spells out the definition and the normative content of the right to international solidarity. It makes the important point that the right to international solidarity draws on the human rights norms that are already codified in international legal documents and that therefore, the right to international solidarity encompasses existing entitlements along with the obligations of States that are well established in international human rights treaties.

39. Article 6 identifies the rights holders and indicates to whom the word "peoples" applies, in addition to those belonging to the more familiar and dominant paradigms. Article 7 enumerates the right of peoples and individuals, individually and in association with others, within their territories and extraterritorially beyond national boundaries, as provided for in human rights and other applicable international instruments. Article 8 identifies the duty bearers as primarily the State, as well as non-State actors that work with groups and communities of people, and describes their duties and responsibilities as such.

40. Articles 9 to 12 encapsulate various elements in existing international commitments signifying duties and obligations of States that are directly linked to international solidarity. Article 10 argues for the establishment of an appropriate institutional framework and domestic measures to give effect to the right to international solidarity. Giving effect to human rights is recognized as an important indication of the value a State attaches to its human rights obligations. Article 11 deals with a human rights-based approach to international cooperation and all partnerships in responding to global challenges. Article 12 focuses on some of the negative obligations of States that are required by international human rights instruments.

F. Five regional consultations

41. The first consultation was held in April 2015 in Geneva with representatives of the Western European and other States and the Eastern European States. Subsequent consultations were then held in July 2015 in Addis Ababa with representatives of the African States; in September 2015 in Panama City with representatives of the Latin American and Caribbean States; in November 2015 in Suva with representatives of the Asia-Pacific States; and in January 2016 in Doha with representatives of the Middle East and North African States.

42. The regional consultations brought together relevant experts and practitioners from Member States, intergovernmental organizations, United Nations agencies, regional economic commissions, the private sector, civil society, including NGOs, and academia and independent experts in each region. OHCHR organized the consultations through its regional and field offices. There was a common agenda for all five regional consultations, consisting, for the most part, of panel presentations followed by discussions, then comments of a general nature that allowed participants to freely discuss the components and features of the proposed draft declaration. The experts who were invited to each consultation were requested to prepare written submissions on specific themes that they presented as panellists, in order to initiate discussions. Their submissions highlighted regional and national experiences and approaches relating to international solidarity. Where possible, panellists were invited based on their experience relating to the implementation of government policies, including in the areas of poverty reduction, food security, public health, international development cooperation, trade, finance, environmental protection, natural disaster risk and management.

43. The discussions were enriched by panel presentations and the ensuing debates among participants. Extensive discussions were also devoted to international cooperation as a duty of States and addressing the challenges of, inter alia, climate change, cross-border migration and terrorism. The consultations were structured to encourage participants to discuss the logic, structure and content of the text of the proposed draft declaration; to provide concrete inputs regarding the text with a view to clarifying issues that were seen to stem from it; and to put forward further recommendations for the implementation on the ground of the right to international solidarity.

44. The timing of the five regional consultations on the proposed draft declaration on the right to international solidarity over ten months beginning in the first quarter of 2015 to early 2016 could not have been more appropriate. The consultations coincided with two major United Nations international conferences held in the last quarter of 2015 — the summit to adopt the 2030 Agenda with its Sustainable Development Goals and the twenty-first session of the Conference of the Parties to the United Nations Framework Convention on Climate Change to adopt what was to be known as the Paris Agreement — two global initiatives to address the future of humanity, in which international solidarity would play a vital role. As such, the thoughts of most participants in the consultations were rife with issues of international solidarity linked to sustainable development and climate change.

G. Submission and revision of the proposed draft declaration

45. The Independent Expert submitted her report on the five regional consultations to the Human Rights Council at its thirty-second session in June 2016 (A/HRC/32/43). In its resolution 32/9, the Council welcomed the report and the Independent Expert's work in convening the regional consultations. It also requested the Independent Expert to convene a meeting with experts from the five geographical regions to assist in finalizing the draft declaration on the right of peoples and individuals to international solidarity, and requested OHCHR to assist her in conducting a legal review of the draft declaration prior to its submission to the Council in 2017.

46. The Independent Expert, with the assistance of OHCHR, consolidated the inputs gathered from the regional consultations and proceeded to revise the text of the proposed draft declaration. The process of revising the original text of the proposed draft declaration took into account the most salient issues arising from the regional consultations, as well as those from the other activities mentioned above, including the personal work experience and studies of the Independent Expert.

H. Expert group meeting on the revised draft declaration on the right to international solidarity

47. On 14 and 15 February 2017, the Independent Expert convened a meeting of legal experts in Geneva to review the revised version of the draft declaration on the right to international solidarity as a last step in its finalization. The six experts represented a diversity of regions, perspectives and areas of expertise, each having a strong legal background, particular knowledge of international solidarity and familiarity with the process that informed the crafting of the draft declaration.

48. The expert group meeting sought to ensure that the draft declaration was in harmony with existing international law and standards, to review and clarify the definition of the right to international solidarity, and to provide other concrete inputs on the proposed text in order to prepare it for submission to the Council. The final revisions to the document have now been completed.

IV. Comments on the revisions of the draft declaration

49. The Independent Expert has revised the draft declaration from its previous version as the "proposed draft declaration" through a process that included the five regional

consultations conducted in 2015 and 2016 and the expert group meeting held in February 2017, as well as significant reflection and research by the Independent Expert herself. The goals of that process were to incorporate the perspectives of States, civil society and experts into the draft declaration as appropriate, and to harmonize the document with the existing framework of international law, particularly international human rights law.

50. Throughout the draft declaration, the Independent Expert has incorporated reference to language and concepts already agreed upon in established international legal documents, including the Charter of the United Nations, the Universal Declaration of Human Rights and the United Nations Framework Convention on Climate Change, in order to strengthen the preamble of the draft text and further develop a well-founded legal framework for the right to international solidarity.

51. During the regional consultations, there was wide agreement that the title of the draft declaration could be simplified to "Draft declaration on the right to international solidarity", because the rights holders — peoples and individuals — are clearly stated in the text of the draft itself.

52. The discussions at the expert group meeting included meaningful considerations on the structure of the declaration as a whole, and on whether it would be best to first define the right to international solidarity, since that was the subject of the declaration, or rather begin with defining the broader concept of international solidarity before proceeding to the substance of the right.

53. The expert group meeting also included significant discussion on the relevance of a draft declaration on international solidarity at a time of rising nationalism and fragmentation around the world. Experts suggested that perhaps current events had truly highlighted the need for the document, and also that a human rights-based vision of international solidarity could create an alternative narrative to that of globalization, which was increasingly perceived to be a harmful and entirely negative force. There was unanimous recognition that, despite political sentiment that focused on divisions, humans existed in a state of interconnectedness and interdependence and that there were global challenges that could not be resolved without international solidarity.

A. Preamble

54. In accordance with the recommendations received during the regional consultations and particularly during the expert group meeting, the Independent Expert has synchronized the preamble to the draft declaration with the operational section of the text, providing a solid context for the declaration while avoiding duplication.

55. The Independent Expert has also ensured that the preamble reflects the full range of international law that is based on international solidarity, adding specific references to international humanitarian and refugee law, climate change law, labour law and other areas of global concern, as well as regional treaties and covenants.

56. At their group meeting, the experts carefully considered and discussed how best to reflect the incorporation of international solidarity throughout international law, including how to ensure that each area of law and each international instrument would be highlighted appropriately, and how to ensure that the documents referenced would truly demonstrate international solidarity.

B. Definition, principles and objectives of international solidarity

57. Following the recommendations made during the regional consultations and the expert group meeting, the Independent Expert has sought to consolidate several articles defining international solidarity. She has identified international solidarity as a foundational principle underlying international law, and enumerated several related principles articulated in international law that provide a basis for international solidarity.

58. At their group meeting, the experts considered how to emphasize the primacy of human rights in the definition of international solidarity, while also recognizing that the principle of international solidarity is broad in nature, extending to every facet of international law and cooperation, and is relevant as such in addressing all human rights and human needs.

59. In response to the discussion at the expert group meeting, the Independent Expert has included reactive solidarity in the constituent elements of international solidarity listed in the text. The list is an attempt to capture most, if not all, of the types of action taken by States and by the international community that can be viewed as expressing international solidarity.

C. Right to international solidarity

60. The Independent Expert has taken care to define the right to international solidarity clearly and meaningfully, mindful of the comments received during the regional consultations and expert group meeting, and of established international law. Responding to the suggestions that were made during the regional consultations and the expert group meeting, the Independent Expert has simplified the articles defining the rights holders and duty bearers of the right to international solidarity, and has clarified the definition of non-State actors who — aside from States — are also identified as duty bearers of the right.

61. Echoing a conversation that also took place during the regional consultations, the expert group meeting debated whether the right to international solidarity should be classified as a right that is justiciable. While some experts struggled to imagine a context in which rights holders might be able to claim that right before a court of law, one expert suggested that the right to international solidarity might provide, for example, a cause of action for a civil society organization that was being targeted by a State for receiving funding from foreign sources, and another proposed that it might be invoked for the protection of those who were prosecuted for providing aid to migrants.

D. Implementation of the right to international solidarity

62. Based on the recommendations that were made during the regional consultations and the expert group meeting, the Independent Expert has worked to align the implementation section of the draft declaration with that of other international declarations by simplifying and generalizing the positive obligations contained in the right to international solidarity and by eliminating the list of negative obligations, many of which were mirrored in the positive obligations already provided in the draft declaration.

63. The expert group gave careful consideration to the particular global issues and challenges that should be enumerated in the implementation articles, recognizing that while certain issues should be highlighted, it is important to make it clear that the implementation of the right is not limited to these particular areas only. The Independent Expert emphasized that the selection of issues highlighted reflected the priorities of prior consultations as well as the need to illustrate linkages between issues that are often overlooked in the discourse.

V. Conclusion and recommendations

64. **One of the questions that elicited lengthy discussions during the expert group meeting was how the right to international solidarity would be implemented in certain circumstances. While acknowledging that the points raised were important considerations, the Independent Expert argued that the understanding of international instruments does not derive solely from the texts, but also from how those instruments are interpreted by those responsible for their implementation. Thus, it is extremely valuable that there exists the space for that process to take place in practice.**

65. In that regard, the Independent Expert recalls that, in the report she presented at the seventy-first session of the General Assembly in 2016, she stated that the validity of a legal argument does not always rest on the nature of its origins, but with the reception it gets from the international community when it is introduced. When States adopt a resolution, they agree in effect on the principles contained in the resolution and may turn them into standard operating procedures, State practice and ultimately, rules of international law, and as such, they will possibly gain the international recognition that cannot be acquired otherwise. That same procedure can be applied to developing the right to international solidarity as an enabling right for the respect, protection and fulfilment of human rights. Our understanding of human rights cannot be perfect and complete from the very start, as exemplified by the international human rights treaties, the enforceability of which did not exist even as they came into force. Human rights can only come into existence as enforceable claims through continuous work and effort by legal and political institutions, human rights mechanisms and most importantly, the experience and practice of States themselves.

66. The Independent Expert also recalls how she came away from the five regional consultations with an even firmer conviction about the feasibility and enforceability of the right to international solidarity as elaborated in the present draft declaration. The regional consultations attested to the fact that many States already have the working institutions and agencies to implement the right to international solidarity. It thus appears that resistance to the idea of a right to international solidarity emanates not from those working on the ground who, by all indications from the five regional consultations and the country visits of the Independent Expert, possess the knowledge and experience to make it work in practice, but from elsewhere. It is also evident from the experiences recounted by national and regional actors that, although it may take a while to surmount some obstacles, the right to international solidarity can be effectively implemented in culturally diverse ways that do not in any way diminish the standards indicated in the draft declaration. Human rights are always a work in progress that can only come into full existence as enforceable claims through the continuous development of their myriad dimensions and the hands-on work being done on the ground by local actors.

67. On every occasion possible, the Independent Expert promotes the position that a declaration on the right to international solidarity would bring significantly closer the formal recognition that the right to international solidarity is a powerful tool in addressing the structural causes of poverty, inequality and other global challenges, including the adverse impact of climate change on human rights. Furthermore, that right is essential in building a global constituency for a just regulation of globalization and more equitable arrangements for trade, investment, finance, aid, foreign debt, technology transfer, intellectual property, migration, labour and the environment. When it is recognized for what it is outside of political rhetoric and considerations, taking full account of that right would be crucial in addressing the impacts of present day global challenges, including the growing refugee and migration crises, the unabated horrors of terrorism and human trafficking. Notably, that right would anchor global partnerships, allowing international commitments to be nurtured and advanced. As such, it would be instrumental to the attainment of the 2030 Agenda for Sustainable Development.

68. In its resolution 32/9, the Human Rights Council mapped the way forward in the work of the mandate on human rights and international solidarity, as contained in its request for the Independent Expert to undertake thematic research on the importance of international solidarity in realizing the human rights of peoples and individuals, including on impediments to mainstreaming it, to assist States, intergovernmental organizations and civil society to actively engage in promoting the important role of international solidarity in the achievement of the 2030 Sustainable Development Agenda, especially in economic, social and climate issues, while paying particular attention to Goal 17 and the related indicators.

Annex

Draft declaration on the right to international solidarity

The General Assembly,

Guided by the Charter of the United Nations, and recalling, in particular, the determination of States expressed therein to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, to promote social progress and better standards of life in larger freedom and to unite their strength to maintain international peace and security,[a]

Recalling that one of the purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction and that all State Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of this purpose,

Recalling also that international solidarity inspires the Universal Declaration of Human Rights, in which the equal and inalienable rights of all members of the human family are recognized[b] and which states that all human beings are born free and equal in dignity and rights,[c] and affirms that everyone is entitled to a social and international order in which rights and freedoms can be fully realized,[d]

Taking into account the fifth preambular paragraph of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which states that individuals, having duties to other individuals and to the communities to which they belong, are under a responsibility to strive for the promotion and observance of the rights recognized therein,

Bearing in mind that international cooperation and solidarity are fundamental principles underlying the endeavour of international law, reflected in General Assembly resolution 2625 (XXV), which affirms the duty of States to cooperate with one another in accordance with the Charter, as well as international agreements such as the United Nations Convention on the Law of the Sea, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, and the Antarctic Treaty, which reflect and address global concerns,

Recognizing the affirmation of international solidarity and cooperation enshrined in the Preamble to the Convention relating to the Status of Refugees and reflected in the Geneva Conventions relating to the protection of victims of international armed conflicts and throughout international humanitarian law,

Recalling the preamble of the United Nations Framework Convention on Climate Change, in which the parties acknowledge the need for international cooperation in accordance with common but differentiated responsibilities and respective capabilities,

Recognizing the commitment to international solidarity embraced by the Declaration concerning the aims and purposes of the International Labour Organization and embodied in that Organization's fundamental conventions,

Recalling the multitude of international and regional human rights treaties and other instruments that express international solidarity, most notably the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural

[a] See the Charter of the United Nations, preamble.
[b] See the Universal Declaration of Human Rights, preamble.
[c] Ibid., art. 1.
[d] Ibid., art. 28.

Rights of 1966, the Declaration on the Right to Development of 1986 and the Vienna Declaration and Programme of Action of 1993,

Taking into account the global commitment to solidarity for sustainable development found in international documents including the Rio Declaration on Environment and Development of 1992, the Copenhagen Declaration on Social Development and Programme of Action of the World Summit for Social Development and the Beijing Declaration and Platform for Action of 1995, the United Nations Millennium Declaration of 2000 and the Addis Ababa Action Agenda of the Third International Conference on Financing for Development and the 2030 Agenda for Sustainable Development of 2015,

Bearing in mind that all regional agreements are founded on and express international solidarity and cooperation, including the Constitutive Act of the African Union, the Charter of the Organization of American States, the Charter of the League of Arab States, the founding treaties of the European Union, and the Charter of the Association of Southeast Asian Nations,

Affirming that international solidarity is a broad principle encompassing, but not limited to, sustainability and responsibility in international relations, the peaceful coexistence of all members of the international community, accountability of States to each other and to their respective citizens, organizations, constituents and stakeholders,[e] equal partnerships and the equitable sharing of benefits and burdens,[f] according to the principle of common but differentiated responsibilities,[g]

Mindful that, while globalization opens up new opportunities for growth and development, it also presents challenges including growing inequality, widespread poverty, unemployment, social disintegration and environmental risks that demand increased coordination and collective decision-making at the global level,

Stressing that international solidarity is a fundamental concept of mutually reinforcing relations among individuals, peoples and States, an essential element that underpins global partnerships, a key approach to peace, disarmament and poverty eradication, and an indispensable component of the efforts to realize all human rights, including the right to development, and internationally agreed development goals,

Recognizing in this regard that international solidarity is essential in overcoming global challenges such as natural disasters, health emergencies and epidemic diseases, the adverse effects of climate change, armed conflict, poverty and hunger, especially among children, terrorism and transnational armed militias, and violence against women,

Taking into account General Assembly resolution 60/251, recognizing that the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings,

Emphasizing the commitment of States in the 2030 Agenda for Sustainable Development to a revitalized Global Partnership in a spirit of global solidarity, particularly solidarity with the poorest and with people in vulnerable situations,

Convinced that overcoming all current and future global challenges, achieving internationally agreed development goals and the full realization of human rights for all critically rest on international solidarity,

Declares the following:

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[e] See the Busan Partnership for Effective Development Cooperation 2011 outcome document. Available from www.oecd.org/dac/effectiveness/49650173.pdf. See also Organization for Economic Cooperation and Development, Development Assistance Committee, "DAC action-oriented policy paper on human rights and development" (2007). Available from http://inprol.org/resource/6398/oecd-dac-action-oriented-policy-paper-on-human-rights-and-development.

[f] See Human rights Council resolution 18/5, para. 2.

[g] See United Nations Framework Convention on Climate Change, art. 3.

Part I. International solidarity: definition, principles and objectives

Article 1

1. International solidarity is the expression of a spirit of unity among individuals, peoples, States and international organizations, encompassing the union of interests, purposes and actions and the recognition of different needs and rights to achieve common goals.

2. International solidarity is a foundational principle underpinning contemporary international law in order to preserve the international order and to ensure the survival of international society.

3. The principle of international solidarity is based on, and in accordance with:

(*a*) Justice, equity, peace, non-interference, self-determination, mutual respect and accountability in international relations;

(*b*) The permanent sovereignty of each State over its own natural wealth and resources and to determine freely its own objectives of sustainable development, to set its own priorities and to decide, in accordance with international human rights law, including the right to development and the principles of the Charter of the United Nations, the means and methods of achieving those objectives, without any external interference;[h]

(*c*) Equitable, just and fair partnerships of States as the basis of international cooperation;

(*d*) Respect for and protection and fulfilment of human rights and fundamental freedoms for all individuals, without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status;

(*e*) The accountability of States to their peoples concerning the implementation of their foreign policy and their bilateral, regional and international agreements and partnerships, for the actions of the international organizations of which they are members, in conformity with the States' international human rights obligations,[i] and for failures to investigate, prevent or sanction the conduct of the private sector within their jurisdiction.

Article 2

International solidarity consists of preventive solidarity, reactive solidarity and international cooperation:

(*a*) Preventive solidarity is characterized by collective actions to safeguard and ensure the fulfilment of all human rights, and requires that States fully respect and comply with their obligations under international law, and that individuals, peoples, civil society, the private sector and international organizations complement the efforts of States through their activities in that regard;

(*b*) Reactive solidarity is characterized by collective actions of the international community to respond to the adverse impacts of natural disasters, health emergencies, epidemic diseases and armed conflict, with the goals of alleviating human suffering, mitigating further damage and ensuring that the response complies fully and effectively with States' obligations under international human rights law;

(*c*) International cooperation rests on the premise that some States may not possess the resources or capacity necessary for the full realization of the rights set forth in international human rights treaties. States in a position to do so should provide international assistance, acting separately or jointly, to contribute to the fulfilment of human rights in other States in a manner consistent with the fundamental principles of international law and international human rights law.

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[h] See A/HRC/21/66, para. 22 (e).

[i] See Committee on Economic, Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 50.

Article 3

The general objective of international solidarity is to create an enabling environment for:

(*a*) Preventing and removing the causes of asymmetries and inequities between and within States, and the structural obstacles and factors that generate and perpetuate poverty and inequality worldwide;

(*b*) Engendering trust and mutual respect between States and non-State actors to foster peace and security, development and human rights;

(*c*) Promoting a social and international order in which all human rights and fundamental freedoms can be fully realized.

Part II. The human right to international solidarity

Article 4

1. The right to international solidarity is a human right by which individuals and peoples are entitled, on the basis of equality and non-discrimination, to participate meaningfully in, contribute to and enjoy a social and international order in which all human rights and fundamental freedoms can be fully realized.

2. The right to international solidarity is grounded in the codification and progressive development of freedoms and entitlements contained in international human rights treaties reflecting civil and political rights, economic, social and cultural rights, the right to development and international labour standards, and complemented by other responsibilities arising from voluntary commitments undertaken in the relevant fields at the bilateral, multilateral, regional and international levels.

Article 5

Individuals and peoples, regardless of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, disability or other status, have the right, individually and in association with others, within or beyond their territories and national boundaries, to claim the right to international solidarity, with particular reference to indigenous peoples, minorities, migrants, refugees and other groups, such as civil society groups and other organizations.

Article 6

1. All States, whether acting individually or collectively, including through international or regional organizations of which they are members, have the primary duty to realize the right to international solidarity.

2. International organizations and non-State actors also have a duty to respect the right to international solidarity, particularly in situations where such actors bear similar and complementary responsibilities to the duties of States.

Part III. Implementing the right to international solidarity

Article 7

1. States shall cooperate with each other and with non-State actors to promote collective action to address poverty, hunger, illiteracy, violent conflict, gender discrimination, preventable deaths and contemporary slavery in all its forms, paying attention to, inter alia, the interrelationship between all these issues and the intersectional nature of discrimination.

2. States shall take all appropriate measures to address the fact that many women and girls face situations of vulnerability, multiple forms of discrimination and gender-based violence.

3. States shall ensure that the procedures and outcomes under international agreements and standards are fully consistent with their human rights obligations in matters pertaining to, inter alia, international trade, investment, finance, taxation, climate change adaptation and mitigation, environmental protection, humanitarian relief and assistance, development cooperation and security.

4. States shall take appropriate, transparent and inclusive action to ensure the meaningful participation of individuals and peoples in decision-making processes at the national, bilateral, regional and international levels on matters that affect their lives.

5. States shall adopt and effectively implement policies and programmes targeted at the promotion and protection of, inter alia, the rich variety and diversity that exist in the cultures of individuals and peoples who make up international society, and the reciprocal influences they exert on each other.

Article 8

1. States shall establish an appropriate institutional framework and adopt domestic measures, legislative or otherwise, to give effect to the right to international solidarity and to ensure that actions and omissions by States and non-State actors do not adversely affect the exercise and full enjoyment of human rights.

2. States shall abstain from impeding access to actual and virtual spaces where individuals and peoples can freely exchange information without unnecessary restrictions.

Article 9

1. States shall implement a human rights-based approach to international cooperation and all partnerships in responding to global challenges such as those relating to:

(*a*) Peace and security, global governance, environmental protection and climate justice, humanitarian relief and assistance, trade, foreign debt, official development assistance, social protection, education, health, and food and nutritional security;

(*b*) Participatory global governance where structural inequalities are addressed;

(*c*) Building equality in power relations between women and men in national, regional and global decision-making and leadership positions;

(*d*) Creating a global enabling environment for sustainable development that is centred on individuals and peoples and grounded in intergenerational equity.

2. States shall establish and implement appropriate mechanisms to ensure that international cooperation is based on equal partnerships, mutual commitments and obligations, without conditionalities that hinder the exercise and enjoyment of human rights, where partner States are accountable to each other, as well as to their respective constituents at the national level, for the outcomes of policies, strategies and performance, whether at the bilateral, regional or international level, which shall be in accordance with international human rights principles and standards.

3. States shall give effect to the establishment of a fair, inclusive, participatory and human rights-based international trade and investment regime where all States shall act in conformity with their obligation to ensure that no international trade agreement or policy to which they are a party has any adverse impact on the protection, promotion and fulfilment of human rights both within and beyond their borders.

4. International cooperation shall be aimed at enabling each State to fulfil its primary responsibility to devote maximum available resources to the implementation of its human rights obligations at the national level, both in the immediate fulfilment of its core obligations as a priority, and in the concrete, deliberate and targeted progressive realization of all human rights, including the right to development.

Article 10

Nothing in the present declaration shall be construed as being contrary to the purposes and principles of the United Nations, or as implying that any State, individual or

people has a right to engage in any activity or to perform any act aimed at the violation of the rights set forth in the Universal Declaration of Human Rights and in the international human rights instruments.

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Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the first report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Vitit Muntarbhorn, which has been prepared pursuant to Council resolution32/2.

The theme of the report is "diversity in humanity, humanity in diversity". The phenomenon of violence and discrimination based on sexual orientation and gender identity is both local and global, requiring strong national and international countermeasures to promote respect for sexual and gender diversity under the umbrella of international human rights law. In recognizing that everyone has some form of sexual orientation and gender identity, there is the regrettable reality that some groups and persons are affected by violence and discrimination, precisely because they are viewed as having a sexual orientation and gender identity that is different from a particular societal norm.

The report offers a window through which to gauge the approach and methodology of the Independent Expert. There are key reflections responding to the mandate, particularly regarding the panorama of the situation, including the implementation of international instruments, with identification of good practices and gaps; awareness of the violence and discrimination issue, and linkage with root causes; dialogue, consultation and cooperation with States and other stakeholders; the identification of multiple, intersecting and aggravated forms of violence and discrimination; and support for international cooperation and related services to assist national efforts.

Various underpinnings are singled out for specific attention to help prevent and overcome negative elements fuelling violence and discrimination, and these will be dealt with in greater detail in future reports: namely, decriminalization of consensual same-sex relations; effective anti-discrimination measures; legal recognition of gender identity; destigmatization linked with depathologization; sociocultural inclusion; and promotion of education and empathy.

The report is anchored on the belief that while the diversity among human beings on the basis of sexual orientation and gender identity should be recognized ("diversity in humanity"), it is essential to harness and reinforce, from a young age, mutual respect, tolerance and understanding, compliance with human rights, and a sense of humanity and inclusivity inherent in that diversity ("humanity in diversity"), to accord protection for all and to all.

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Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

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I. Introduction

1. The mandate of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity was established by the Human Rights Council in 2016 in its resolution 32/2.[1] Vitit Muntarbhorn, an emeritus law professor from Thailand, was appointed to the post, as the first mandate holder. He began his mandate in November 2016. The Independent Expert is mandated to report annually to the Human Rights Council and the General Assembly. The present report is the first by the Independent Expert under a three-year mandate and it covers the first few months of his work, up until March 2017. The Independent Expert wishes to warmly thank Governments, international organizations, non-governmental organizations, communities, individuals and other stakeholders for their kind support. He welcomes the information sent by numerous contributors, which will progressively be integrated into his analysis and reports.

2. Everyone has some form of sexual orientation and of gender identity.[2] Sexual orientation has an external dimension — it indicates a person's sexual inclination and feelings towards others. Gender identity has an internal dimension — the term refers to how a person self-identifies in regard to his or her own gender, which may be different from the gender assigned at birth. Even though human rights are inherent to everyone and involve protection for all persons without exception, regrettably persons with an actual or perceived sexual orientation and/or gender identity diverging from a particular societal concept are at times targeted for violence and discrimination, and violations are pervasive in numerous settings. Killings, rapes, mutilations, torture, cruel, inhuman and degrading treatment, arbitrary detentions, abductions, harassment, physical and mental assaults, bullying suffered from a young age, pressures leading to suicide, and discriminatory gestures and measures — aggravated by incitement to hatred — in relation to sexual orientation and gender identity, are widespread on several fronts. These negative incidents call for effective action to counter the violence and discrimination in their various forms. This is a local-global phenomenon that traverses the home, the educational system, community relations, national scenarios and the international setting.

3. The present report is thus anchored on the belief that while the diversity among human beings on the basis of sexual orientation and gender identity should be recognized (i.e. diversity in humanity), it is essential to harness and reinforce, from a young age, mutual respect, tolerance and understanding, compliance with human rights, and a sense of humanity and inclusivity inherent in that diversity (i.e. humanity in diversity), under the umbrella of international human rights law, to accord protection for all and to all.

II. Methodology

4. The work of the Independent Expert follows the mandate set by the Human Rights Council as part of the Council's special procedures. From the outset, the Independent Expert has adopted an approach of open and constructive dialogue and of engagement with

[1] See A/HRC/29/23 for background information.

[2] For some definitions, see *Living Free and Equal: What States Are Doing to Tackle Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex People* (United Nations publication, 2016), pp. 18 and 19, available from www.ohchr.org/Documents/Publications/LivingFreeAndEqual.pdf: "Gender identity reflects a deeply felt and experienced sense of one's own gender … Transgender (sometimes shortened to "trans") is an umbrella term used to describe people with a wide range of identities … Trans women identify as women but were classified as males when they were born. Trans men identify as men but were classified female when they were born … Intersex people are born with physical or biological sex characteristics including sexual anatomy … that do not fit the typical definitions of male or female … Sexual orientation refers to a person's physical, romantic and/or emotional attraction towards other people … Gay men and lesbian women are attracted to individuals of the same sex as themselves. Heterosexual people are attracted to individuals of a different sex from themselves. Bisexual … people may be attracted to individuals of the same or different sex."

a broad range of stakeholders. Shortly after assuming the mandate, the Independent Expert held a public consultation on the mandate to engage in dialogue with Governments, non-governmental organizations, international organizations and other actors, in Geneva, in January 2017. The aim was to consult broadly on the work under the mandate. The consultation was webcast publicly so as to enable global access to it. The various key issues raised during the consultation are reflected in the present report. Since the beginning of his work on the mandate, he has gathered a wide range of information — some written, some oral — to help prepare the present report. This is an introductory report — a window through which to gauge his approach — and it provides an overview of issues to be explored in more detail in subsequent reports. It is the Independent Expert's intention to balance and cross-check between a variety of sources of information — governmental, intergovernmental and non-governmental. He does this with a view to ensuring objectivity of analysis in his capacity as Independent Expert; the present report was written and typed by the Independent Expert himself.

5. Other aspects of the methodology include plans for country visits, action to respond to communications to address negative situations pertaining to sexual orientation and gender identity, and cooperation with a broad range of actors, including affected groups and individuals, Governments, regional and national human rights institutions, other special procedure mandate holders, human rights treaty bodies and United Nations agencies. The first country visit carried out by the mandate holder was to Argentina, in March 2017. His end-of-mission statement is available online.[3] A separate report on his mission to Argentina will be issued subsequently. The Independent Expert warmly thanks the Government and people of Argentina for their excellent cooperation. He was impressed with many key developments in the country, which provide positive lessons for the rest of the world community, while also bearing in mind a range of challenges.

III. Mandate

6. There are various essentials that should be taken into account in undertaking work related to this mandate. Firstly, words are very sensitive under the mandate. From his very first days undertaking his tasks, the Independent Expert has been struck by the quest for balanced terminology concerning sexual orientation and gender identity. The acronym "LGBTI" appears in discussions and is closely linked with this mandate.[4] It stands for lesbian, gay, bisexual and transgender (persons). Many people are confused by the terms "transgender man/trans man" and "transgender woman/trans woman". The former denotes those classified biologically at birth as women, who wish to have their self-identity recognized as men, while the latter means the converse: those classified biologically at birth as men, who wish to have their self-identity recognized as women. The term "intersex" (person) — the "I" in "LGBTI" — even when explained as referring to persons with atypical sex characteristics, is not easily understood.[5] The mandate will cover this group where there is a link with sexual orientation and gender identity, while recognizing that the group has special features not necessarily related to sexual orientation and gender identity.

7. Secondly, regrettably, every society has many pejorative terms used to designate various groups and persons as regards their sexual orientation or gender identity. Semantic negativities add to a lack of (or difficulties in) understanding and to misconceptions — fuelling narrow mindsets — about those who fall under the rubric of sexual orientation and gender identity, and this dilemma contributes to the ensuing violence and discrimination. There is thus an invitation to clarify the terms used and to avoid negative terminology, to help prevent misunderstandings and to stem biases and prejudices which breed various "phobias" and which are found, to a lesser or greater extent, in all societies. Many United

[3] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21343&LangID=E.
[4] Ibid.
[5] Ibid.

Nations programmes, underlining the plight of persons, now employ the denomination "LGBTI", and add an "I" when referring to intersex persons (thus "LGBTI").[6]

8. Thirdly, the preamble to Human Rights Council resolution 32/2, which established the mandate of the Independent Expert, is a key reminder that there are historical, cultural, socioeconomic, political and religious sensitivities, and that there is a need to respond to them in a measured and judicious way, bearing in mind their connectivity with international human rights standards. The preamble reaffirms the Universal Declaration of Human Rights. The relationship between international human rights law — particularly its universality and indivisibility — and national and regional particularities is then evoked in a famous passage from the Vienna Declaration and Programme of Action, adopted at the World Conference on Human Rights held in Vienna in1993, which is cited in Council resolution 32/2 as follows:

> Recalling that the Vienna Declaration and Programme of Action affirms that all human rights are universal, indivisible and interdependent and interrelated, that the international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis, and that while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

9. Fourthly, the preamble also emphasizes the need to maintain joint ownership of the international human rights agenda and to strengthen action against racism, racial discrimination, xenophobia and related intolerance in all their forms — all of which may be interrelated with violence and discrimination in regard to sexual orientation and gender identity.[7] This introduces the intersectionality between sexual orientation and gender identity on the one hand, and other issues, such as race and others forms of discrimination.

10. Fifthly, the Independent Expert is requested under Council resolution 32/2, as follows:

> (a) To assess the implementation of existing international human rights instruments with regard to ways to overcome violence and discrimination against persons on the basis of their sexual orientation or gender identity, while identifying both best practices and gaps;
>
> (b) To raise awareness of violence and discrimination against persons on the basis of their sexual orientation or gender identity, and to identify and address the root causes of violence and discrimination;
>
> (c) To engage in dialogue and to consult with States and other relevant stakeholders, including United Nations agencies, programmes and funds, regional human rights mechanisms, national human rights institutions, regional mechanisms, civil society organizations and academic institutions;
>
> (d) To work in cooperation with States in order to foster the implementation of measures that contribute to the protection of all persons against violence and discrimination based on sexual orientation and gender identity;
>
> (e) To address the multiple, intersecting and aggravated forms of violence and discrimination faced by persons on the basis of their sexual orientation and gender identity;
>
> (f) To conduct, facilitate and support the provision of advisory services, technical assistance, capacity-building and international cooperation in support of

[6] See, for example, the Office of the United Nations High Commissioner for Human Rights (OHCHR) paper issued on 25 November 2015 entitled "The role of the United Nations in combating discrimination and violence against individuals based on sexual orientation and gender identity".

[7] See Human Rights Council resolution 32/2.

national efforts to combat violence and discrimination against persons on the basis of their sexual orientation or gender identity."[8]

11. Key elements emanating from the mandate cited above can be summarized into five main areas, as follows: (a) implementation of international instruments, with the identification of good practices and gaps; (b) awareness of the violence and discrimination issue, and linkage with root causes; (c) engagement, consultation and cooperation with States and other stakeholders; (d) addressing multiple, intersecting and aggravated forms of violence and discrimination; and (e) support for international cooperation and related services to assist national efforts. These elements will be responded to in greater detail below, after a brief situational analysis of violence and discrimination based on sexual orientation and gender identity.

12. In keeping with the role of the special procedures, the work of the Independent Expert is related to at least four functions: (a) preparing reports on the mandate; (b) periodically carrying out country visits to learn about local situations and sharing those lessons with the international community; (c) receiving communications/complaints regarding human rights violations, from victims, and acting on them through contact and leverage with the State or entity concerned; and (d) cooperating with other actors. All these functions are now operational. Importantly, communications are being received and acted upon, for example in regard to threats to human rights defenders working on sexual orientation and gender identity issues.

IV. Panorama

13. This section provides snapshots of violence and discrimination based on sexual orientation and gender identity, and related countermeasures, but cannot do justice to the scale and scope of the issue worldwide. Future reports of the Independent Expert will provide further details and updates.

14. According to the statement from 12 United Nations entities on ending violence and discrimination against lesbian, gay, bisexual, transgender and intersex people:

> The United Nations and others have documented widespread physical and psychological violence against LGBTI persons in all regions — including murder, assault, kidnapping, rape, sexual violence, as well as torture and ill-treatment in institutional and other settings. LGBTI youth and lesbian, bisexual and transgender women are at particular risk of physical, psychological and sexual violence in family and community settings. LGBTI persons often face violence and discrimination when seeking refuge from persecution and in humanitarian emergencies. They may also face abuse in medical settings, including unethical and harmful so-called "therapies" to change sexual orientation, forced or coercive sterilization, forced genital and anal examinations, and unnecessary surgery and treatment on intersex children without their consent. In many countries, the response to these violations is inadequate, they are underreported and often not properly investigated and prosecuted, leading to widespread impunity, and lack of justice, remedies and support for victims. Human rights defenders combating these violations are frequently persecuted and face discriminatory restrictions on their activities.[9]

15. The following gaps and challenges are outlined in *Living Free and Equal*:

> Criminalization, discriminatory attitudes, harassment by police, stigma, ill-treatment in detention and medical settings, lack of protective legislation, absence of complaints mechanisms, lack of trust in law enforcement officials and of awareness by judicial operators still result in impunity for perpetrators and make it difficult for victims of human rights violations to access effective remedies and support.

[8] Ibid., para. 3.

[9] See www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF.

> Consensual same-sex relationships remain a crime in 73 countries, which exposes individuals to the risk of arrest, blackmail and extortion, and feeds stigma, discrimination and violence. While five States have decriminalized homosexuality since 2011, in several other States new discriminatory law have been adopted or proposed, sanctions have been broadened and discriminatory restrictions placed on freedom of expression and association.[10]

16. There are many more snapshots below, on the root causes of violence and discrimination. Non-governmental and other sources provide a wealth of information and document a litany of abuses covering all parts of the globe.[11] Underlying that panorama is the multifaceted nature of the violence and discrimination, which stretches from the home to the education system to the community setting to the State level and beyond. This is a systemic phenomenon, which will be discussed further below.

V. Reflections

17. The entry point for the mandate holder is action against violence and discrimination. This is based on existing international human rights law and its interrelationship with sexual orientation and gender identity; there is no advocacy of new rights for particular groups.

18. Also important is the context-specific nature of each country and situation. The situation is not necessarily the same for lesbian, gay, bisexual and transgender (and intersex) persons across the board, even though human rights are inherent to all persons without distinction: the situation is not homogeneous but heterogeneous. For instance, in one country, same-sex relationships are criminalized, with the threat of the death penalty. This is primarily targeted at homosexuals. However, in that same country, those who self-identify as transgender are assisted and recognized by the State (to undergo reassignment surgery). The lack of awareness or understanding or knowledge, and the biases and stereotypes, vary between countries and within each country — depending on diverse factors such as geography (urban vs. rural), demography (e.g. different educational and economic levels), and cultural affinity.

19. The reflections that follow are an initial response regarding the key elements under the mandate.

A. Implementation of international instruments, with identification of good practices and gaps

20. An array of international human rights instruments help to entrench calls for non-violence and the principle of non-discrimination in international law, with due respect for sexual orientation and gender identity. The genesis of human rights protection after the Second World War was the Universal Declaration of Human Rights, of 1948. There are now nine core international human rights treaties, complemented by various protocols.[12] All of them interrelate with the issue of sexual orientation and gender identity, to a lesser or greater extent. For instance, the right to be free from discrimination is propounded in article 2 of the Universal Declaration of Human Rights and in all human rights treaties. Article 2 of the International Covenant on Civil and Political Rights stipulates:

> Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in

[10] See *Living Free and Equal*, p. 11.

[11] For example, a wealth of information was shared at the world conference of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, held in Bangkok from 28 November to 2 December 2016; see http://ilga.org. The Independent Expert has begun attending a number of non-governmental conferences and thanks the hosts warmly for their kind hospitality.

[12] See *The Core International Human Rights Treaties* (United Nations publication, Sales No.E.14.XIV.1).

the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

21. Other provisions (e.g. article 7 of the Universal Declaration of Human Rights and article 26 of the International Covenant on Civil and Political Rights) reaffirm the right to equality before the law and equal protection of the law without discrimination. The stricture against discrimination was deliberated upon by the Human Rights Committee in regard to a seminal case, *Toonen v. Australia*, that concerned the presence of a local law that prohibited same-sex relations. The Committee found that the local law in question violated article 17 of the Covenant in regard to the right to privacy, and that the reference to "sex" in article 2 (1) (as well as in art. 26) covered sexual orientation.[15]

22. Under the International Covenant on Economic, Social and Cultural Rights, the monitoring committee has affirmed that the right to non-discrimination guaranteed by the Covenant includes sexual orientation, gender identity and sex characteristics. Under the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, the monitoring committees have issued general comments and have made recommendations to States covering respect for sexual orientation and gender identity.

23. All countries have engaged with the Human Rights Council's universal periodic review and most have engaged with one or more of the special procedures. There has been much coverage of the issue of sexual orientation and gender identity under these mechanisms, particularly from the angle of anti-violence and anti-discrimination, such as in the work of the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

24. As evidenced by the wide range of international human rights treaties that are in force, international human rights bodies and procedures — ranging from the human rights treaty bodies, with their general comments and recommendations, to the universal periodic review, to the special procedures' coverage of sexual orientation and gender identity-related violations, to resolutions and studies — the international human rights system has been strengthening the promotion and protection of human rights without distinction. The protection of persons based on their sexual orientation and gender identity, and the mandate of the Independent Expert, are based on international law, complemented and supplemented by State practice.

25. Action against violence and discrimination has been espoused more recently in the 17 globally agreed Sustainable Development Goals, to which all countries are committed, with a framework of 2015-2030 for operationalization. Goal 16, which covers inclusive societies and access to justice, aims to bring about substantial reductions of violence and to promote anti-discrimination measures, on the basis of leave no one behind. An all-inclusive approach invites effective coverage of all persons whatever their sexual orientation or gender identity.

26. The initiatives of regional organizations have led to constructive developments. The European human rights system has evolved greatly and proactively on the issue of sexual orientation and gender identity. The Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) has flourished, with important case work on sexual orientation and gender identity being carried out. Furthermore, a number of articles of the Convention, on such matters as the right to non-discrimination, the prohibition of torture, the right to privacy and the right to freedom of expression have been the subject of judicial deliberation. There have been a variety of cases before the European Court of Human Rights, covering a wide expanse of Europe and

[15] See communication No. 488/1992, Views adopted on 31 March 1994. There have been many other cases, for example *Young v. Australia* and *X v. Colombia*, concerning discrimination on the grounds of sex or sexual orientation: see communications No. 941/2000, Views adopted on 6 August 2003, and No. 1361/2005, Views adopted on 30 March 2007, respectively.

interlinking geographically with the furthest reaches of Asia, with much innovative thinking.[14] In parallel to this, the European Union, with its Charter of Fundamental Rights, has strengthened measures against violence and discrimination on the basis of sexual orientation and gender identity, including via the collection and collation of data through the European Union Agency for Fundamental Rights to inform policymaking and action.[15]

27. The inter-American system has offered many contributions to action against violence and discrimination. In addition to its important range of human rights-related declarations and conventions and its regional human rights court and commission, it has appointed a regional rapporteur specifically to cover the issue of lesbian, gay, bisexual, transgender and intersex persons. The General Assembly of the Organization of American States recently approved two treaties which refer to sexual orientation and gender identity directly as grounds on which discrimination must be prohibited: namely the Inter-American Convention Against All Forms of Discrimination and Intolerance and the Inter-American Convention on Protecting the Human Rights of Older Persons.[16]

28. Complementing the measures outlined above, resolution 275 of the African Commission on Human and Peoples' Rights, on protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity, of 2014, resonates with the following message for the African region and beyond:

> Strongly urges States to end all acts of violence and abuse, whether committed by State or non-State actors, including by enacting and effectively applying appropriate laws prohibiting and punishing all forms of violence including those targeting persons on the basis of their imputed or real sexual orientation or gender identities, ensuring proper investigation and diligent prosecution of perpetrators, and establishing judicial procedures responsive to the needs of victims.[17]

29. Interregional cooperation bore fruit when the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights and the United Nations held a joint dialogue in 2016, calling for more mainstreaming of regional and international norms to counter violence and discrimination, interlinking with the opportunities offered by the Sustainable Development Goals. The joint dialogue acknowledged positive steps from the African region, as follows:

> African States are almost all characterized by great diversity in their populations, with ethnic, religious and cultural diversity being the common denominator. In line with article 28 of the Charter,[18] which calls on every individual "to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance", the Commission may advocate for the rights of all persons, including LGBT and intersex persons. In this respect, it can build on positive examples of State action in Africa and elsewhere to respect diversity and protect the human rights of all persons, irrespective of sexual orientation and gender identity. Participants noted that at least 19 African States do not criminalize consensual same-sex relations between adults in their legal systems, that Mozambique in 2014 removed criminal sanctions for such

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[14] See www.coe.int/en/web/sogi;and Frédéric Edel, *Case Law of the European Court of Human Rights Relating to Discrimination on Grounds of Sexual Orientation or Gender Identity* (Strasbourg, Council of Europe, 2015).

[15] See, for example, European Union Agency for Fundamental Rights, *EU LGBT survey - European Union lesbian, gay, bisexual and transgender survey – Main results* (Vienna, 2014), at http://fra.europa.eu/en/publication/2014/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-main.

[16] *Ending Violence and Other Human Rights Violations Based on Sexual Orientation and Gender Identity: A Joint Dialogue of the African Commission on Human and Peoples' Rights, Inter-American Commission on Human Rights and United Nations* (Pretoria University Law Press, 2016), p. 62. See www.ohchr.org/Documents/Issues/Discrimination/Endingviolence_ACHPR_IACHR_UN_SOGI_dialogue_EN.pdf.

[17] Ibid., p. 28.

[18] African Charter on Human and Peoples' Rights.

> conduct, that Rwanda and other States have resisted recent attempts to introduce such laws into their legal system, that seven States prohibit discrimination in employment on the basis of sexual orientation, that courts in Botswana and Kenya, among others, recently declared the refusal to register LGBT associations to be unconstitutional, and that a number of national human rights institutions (including in Kenya, Uganda and South Africa) have expressed themselves against human rights violations based on sexual orientation or gender identity.[19]

30. Other regional human rights instruments offer opportunities for advocacy against violence and discrimination. For instance, it is stated in the Arab Charter on Human Rights, of 2004, in its article 3, that:

> Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.[20]

31. The ASEAN Human Rights Declaration, of 2012, stipulates that:

> Every person is entitled to the rights and freedoms set forth herein, without distinction of any kind, such as race, gender, age, language, religion, political or other opinion, national or social origin, economic status, birth, disability or other status.[21]

32. A sample of recent constructive practices can be cited. A number of countries on every continent have seen reforms of antiquated and obstructive laws and policies, even though the progress is not always universal. Many South Asian countries and countries in other regions uphold the rights of transgender people, even where they have difficulty in accepting the rights of gays, lesbians and bisexuals. Same-sex couples are now allowed to marry officially in a number of countries, such as Canada, the United States of America, and a range of countries in Europe and Latin America. In 2016, a top court in Belize declared an old law, which had prohibited same-sex relations, to be unconstitutional. Seychelles reformed its law similarly on this front. In 2017, New Zealand agreed to expunge the criminal record of persons criminalized by the colonial law which had forbidden same-sex relations (the law itself having been abrogated a while ago).[22] Germany also moved to annul Nazi-era homosexuality convictions (about 42,000 such convictions had been made under the Third Reich, under an old provision of the Penal Code (art. 175)) and to offer compensation.[23]

33. Yet, there are evidently several gaps, interlinked with the root causes and environment behind the violence and discrimination, which will be elaborated upon in the sections below. Even in countries that are party to the human rights treaties and even where there are responsive laws, policies and programmes, there are sometimes major incidents of violence and discrimination, such as killings of transgender persons, attacks on sexual orientation and gender identity-related human rights defenders, and sexual orientation and gender identity-related hate speech on social networks, which invites sustained vigilance both at the national and the international levels.

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[19] *Ending Violence and Other Human Rights Violations Based on Sexual Orientation and Gender Identity*, p. 21.

[20] Reprinted in *International Human Rights Reports*, vol. 12 (2005), p. 839.

[21] The Declaration has to be read together with the Phnom Penh Statement on the Adoption of the ASEAN Human Rights Declaration, to ensure implementation in conformity with international human rights law.

[22] See press release by the Government of New Zealand on 9 February 2017, at https://www.beehive.govt.nz/release/historical-homosexual-convictions-eligible-be-wiped.

[23] As reported in the *Bangkok Post* on 24 March 2017, p. 5.

B. Awareness of the violence and discrimination issue, and linkage with root causes

34. The cross-cutting scenario of violence and discrimination is described by the World Health Organization (WHO) as follows:

> Many people in the world are stigmatized and discriminated against because of their actual or perceived sexual orientation or gender identity. Among other disparities, lesbian, gay and transgender people are significantly more likely than the general population to be targeted for violence and harassment, to contract HIV, and to be at risk for mental health concerns such as depression and suicide.
>
> In settings where same-sex consensual sexual behaviour is against the law, people may be deterred from seeking health services out of fear of being arrested and prosecuted.[24]

35. How aware is the general population of the issue of sexual orientation and gender identity and the interface with violence and discrimination? The reality is often embedded in lack of awareness, misunderstanding, misconceptions and/or ambivalence. Violence and discrimination on the basis of sexual orientation and gender identity often starts being experienced in childhood, at home and in school, for example through bullying. The lack of awareness/knowledge might be compounded by stereotyping, homophobia and transphobia, virulent from the bottom to the top of the social, cultural and political ladder, tailed by the immediacy of social networks. Even among those who are educated, there is at times a cloistered mindset that wrongly looks upon lesbian, gay, bisexual and transgender people as being deviants and being mentally ill. Hate crimes, such as killings, rapes, incitement to violence, and cruel treatment on account of one's sexual orientation or gender identity, might be paralleled by prejudice, intolerance and bigotry from the personal level to the systemic level.

36. What are some of the root causes? While more empirical research is needed on the issue, behind the violence and discrimination there is an environment of negative elements: multiple factors, with longitudinal and intergenerational implications. From the health angle, the message from the following citation rings true:

> Violence against people from key populations has been shown to be a risk factor for HIV acquisition. Such violence is common. It can take various forms — physical, sexual or psychological. Violence is fuelled by the imbalance in the power dynamics of gender and by prejudice and discrimination against persons perceived to depart from conventional gender and sexuality norms and identities. Also, multiple structural factors influence vulnerability to violence, including discriminatory or harsh laws and policing practices and cultural and social norms that legitimate stigma and discrimination.
>
> Homophobic violence, too, is increasing in some countries, as more policies and laws have banned same-sex activity and made it a criminal offence. This is likely to increase HIV risk.[25]

37. In reality, there are many social, economic, cultural, legal and political factors behind the environment that breeds violence and discrimination. Various underpinnings deserve particular attention to help prevent and overcome the negative elements of that environment. These will be referred to initially below, and in more detail in future reports from the Independent Expert. In particular, the following underpinnings are essential as part of a strategy of preventing and protecting against violence and discrimination on the basis of sexual orientation and gender identity:

- Decriminalization of consensual same-sex relations;

[24] WHO, *Sexual Health, Human Rights and the Law* (Geneva, 2015), p. 23.

[25] WHO, *Consolidated Guidelines on HIV Prevention, Diagnosis, Treatment and Care for Key Populations* (Geneva,2014), p. 101.

- Effective anti-discrimination measures;
- Legal recognition of gender identity;
- Destigmatization linked with depathologization;
- Sociocultural inclusion.
- Promotion of education and empathy

C. Dialogue, consultation and cooperation with States and other stakeholders

38. Constructive dialogue is an imperative for the mandate, and the Independent Expert has endeavoured to initiate this from the very first days of his work. He recognizes that it is essential to build bridges — not only to those who already have plenty of awareness, understanding and knowledge but also to those who have less. In the quest for amicable discourse, there is the understanding that there can be no justification for crimes, such as killings, rapes and torture, nor for discrimination. The opportunity for dialogue, consultation and cooperation was exemplified by the public consultation held in Geneva in January 2017. The consultation was open to States, United Nations agencies and other interested stakeholders. This consultation was planned to help the Independent Expert to identify priority work areas in carrying out his mandate and to develop effective strategies to accomplish them. Major issues discussed included the situation of violence and discrimination based on sexual orientation and gender identity and the various underpinnings referred to above and below. At the end of the consultation, the Independent Expert summarized key inputs from the various participants who advised him on his role and work in fulfilling the mandate as follows:

- Analytical: The work of the mandate holder is based on independent and objective analysis of the situation drawn from a variety of information sources.
- Pedagogical: The work has an educational role in raising awareness among the public and educating the public about the situation.
- Intersectoral: The work invites the Independent Expert to cross-link with a variety of actors and stakeholders — governmental, non-governmental and intergovernmental.
- Focal/vocal: The work is a focal point for those affected by transgressions, and it also helps them to vocalize their concerns, not simply as victims but also as survivors and experts on the subject.
- Empirical: The work is an opportunity for encouraging and generating information and data, possibly disaggregated, to support a balanced evidence-based approach to address the issue.

D. Identifying multiple, intersecting and aggravated forms of violence and discrimination

39. Violence and discrimination often appear not as singular events but as part of a prolonged vicious circle. They are multiple and muliplied — inextricably linked emotionally, psychologically, physically and structurally. They intersect in a variety of ways, and most clearly where the victim is not only attacked or discriminated against for having a different sexual orientation and gender identity but also on grounds of race, ethnic origin, age, gender, or membership of a minority or indigenous community. The person might also be a child, a young girl, an intersex person, a refugee, an internally displaced person, a migrant worker, a person with a disability, and more. This intersectionality involves a conglomeration of incidents, actors, perpetrators, and victims — the latter being revictimized an infinite number of times, possibly in different phases of life. The situation becomes aggravated precisely because of the convoluted nature of the phenomenon, where crimes are replicated against the same victims and where impunity prevails subsequently, from the home to the school, to the community, to the nation State and to the international

spectrum. In today's cyber world and social media, incitement to hatred and violence driven by hate speech relating to sexual orientation and gender identity has an exponential reach, spinning the web of violations in real time and into the future.

40. As an example, the multiple, intersecting and aggravated forms of violence and discrimination based on sexual orientation and gender identity are clearly visible in the refugee and migration context, especially where a person has to flee dangers or persecution. As the Office of the United Nations High Commissioner for Refugees (UNHCR) observes:

> Lesbian, gay, bisexual, transgender and intersex (LGBTI) persons of concern can suffer a wide range of discrimination and violence because of their sexual orientation or gender identity. Displaced LGBTI persons may face continued or additional discrimination in the country in which they seek asylum or as internally displaced within their country of origin. Persecution may be legally condoned (some countries continue to criminalize same-sex relationships) and in many cases LGBTI persons are ostracized by communities and rejected by their families.[26]

E. Support for international cooperation and related services to assist national efforts

41. This is a key area, where the work of the Independent Expert can help to support cooperation to prevent and overcome violence and discrimination on the basis of sexual orientation and gender identity. Important work is already being done to counter such violence and discrimination and it can be further strengthened. The joint statement from 12 United Nations entities (see para. 14 above) was a major intersectional and intersectoral breakthrough in terms of inter-agency cooperation, between the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Development Programme (UNDP), the United Nations Population Fund (UNFPA), UNHCR, the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime, the World Food Programme, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization (UNESCO), WHO, the World Bank and the Joint United Nations Programme on HIV/AIDS (UNAIDS). At the public consultation held by the Independent Expert in January 2017, there was similar advocacy from the United Nations Human Settlements Programme (UN-Habitat), and the list of cooperating organizations can be expanded.

42. The Independent Expert looks forward to interlinking more closely with United Nations agencies and other actors to support activities, while commending the programmes already undertaken. For instance, UNESCO is involved in addressing the issue of bullying in the educational setting; this is visible through its Teaching Respect for All initiative. It has helped to create lesson plans for teachers to discuss homophobia and transphobia in primary and secondary schools.

43. The UNESCO report entitled "Out in the open: education sector responses to violence based on sexual orientation and gender identity/expression", published in 2016, provides a wealth of information in this regard. UNESCO has also been working to promote understanding of lesbian, gay, bisexual, transgender and intersex issues in China, with a series of initiatives that includes training of trainers on education on lesbian, gay, bisexual, transgender issues, and with non-governmental help, research for textbooks covering sexual orientation and gender identity has been carried out.

44. The work of UNICEF is guided particularly by the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Its programming on lesbian, gay, bisexual, transgender and intersex issues, and its link with children and youth, is part of its equity strategy to enable all children to develop and realize their potential without discrimination. UNICEF is increasingly looking at child protection through the lens of action against violence and discrimination, inspired by the

[26] UNHCR, "Action against sexual and gender-based violence: an updated strategy", p. 18.

Sustainable Development Goals. Interestingly, in Goal 16, the target is to eliminate violence against children totally in the next 15 years; this also implies a relationship with sexual orientation and gender identity, in order to leave no children behind.

45. OHCHR has been instrumental in preparing various reports and studies on violence and discrimination on the basis of sexual orientation and gender identity. In particular, the publications *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* and *Living Free and Equal* offer very useful information with global coverage.[27] OHCHR supports the human rights treaty bodies, the universal periodic review and the special procedures in their work and helps to mainstream the issue into a cross-cutting United Nations setting. Together with other partners, it helps to organize the annual International Day Against Homophobia, Transphobia and Biphobia event. Its field presences around the world assist in disseminating information, collecting information and addressing cases where there are violations, with a view to strengthening human rights protection on the basis of sexual orientation and gender identity. Its Free and Equal campaign is a broad information campaign, with publications, films and videos raising the profile of sexual orientation and gender identity from the angle of action against violence and discrimination. Particularly popular are the videos *Faces*, which captures the myriad contributions by lesbian, gay, bisexual, transgender and intersex persons to families and communities, *The Welcome*, which provides a human rights message with a Bollywood touch, complete with music, and *The Riddle*, which examines the abuses facing lesbian, gay, bisexual and transgender persons across the globe.

46. UNDP has a large number of programmes worldwide on lesbian, gay, bisexual, transgender and intersex issues, and the outreach is both to the pillars of the State (the executive, legislative and judicial branches) and to pillars of the community, such as national human rights institutions, non-governmental organizations and human rights defenders, including platforms for dialogue with local governments. Pursuant to the Sustainable Development Goals, UNDP is working on a lesbian, gay, bisexual, transgender and intersex inclusion index to help generate more data, which will also contribute to policy formulation and programming. Some of the activities are on strengthening HIV responses for men who have sex with men and transgender people, and access to health care, while others are more directly on the legal and social environment for lesbian, gay, bisexual and transgender persons and civil society in a number of countries.

47. UNFPA concentrates on the issue of sexual and reproductive rights and their relationship with health, including for lesbian, gay, bisexual, transgender and intersex persons, through four areas: policy formulation, capacity development, information and knowledge and delivery of services. It has developed a stigma index tool to help expose stigma, and has enabled access to condom and lubricant programming based on the principles of non-stigmatization and non-coercion. It has reached out to vulnerable groups to reduce HIV-related stigma, and it has called for the reform of punitive laws that drive people underground, in relation to same-sex relations, sex work and drugs-related situations.

48. The work of WHO, particularly in the area of sexual health, has already been referred to above, as has the work of UNHCR on refugees, asylum seekers and stateless persons, particularly in relation to the intersectionality issue. UNHCR has been facing new challenges in regard to recent outflows from the war-related situations in Middle East to Europe and other regions, and it has done key work to raise the profile of sexual orientation and gender identity issues. Meanwhile, UN-Women has been highlighting the rights of lesbians and bisexual, transgender and intersex women and girls; thus has included the mapping of country situations and support for follow-up to the recommendations of human rights treaty bodies and the universal periodic review. For instance, there is an awareness-raising programme on action to end violence against women in Malawi, which includes references to lesbian, bisexual and transgender women. Complementing this, the International Labour Organization is infusing the lesbian, gay, bisexual and transgender

[27] OHCHR, *Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law* (United Nations publication, 2012), and *Living Free and Equal*.

issue strongly into its decent work programme, while the World Bank has helped to examine the cost of homophobia as well as to generate data on lesbian, gay, bisexual and transgender exclusion. The World Bank has now a focal point on sexual orientation and gender identity and this provides an important opportunity to address violence and discrimination on the basis of sexual orientation and gender identity, especially with low-income countries. A range of other United Nations agencies and programmes, enhanced by United Nations country teams, are progressively integrating the issue of sexual orientation and gender identity into country programming.

49. The role of civil society and non-governmental organizations and of concerned communities and individuals is critical for action against violence and discrimination. Their dedicated efforts and inputs were instrumental in helping to set up this mandate, and there is a wealth of information emanating from their work which inspires the work of the Independent Expert. They are part and parcel of much-needed cooperation at both the national and international levels and act as human rights defenders in the most sensitive situations. Assistance and protection for their work are at the heart of this mandate, which is impelled by the quest for an all-inclusive approach that is respectful of public participation in countering violence and discrimination on the basis of sexual orientation and gender identity, worldwide. Indeed, this is living democracy in regard to sexual and gender diversity.

50. Parallel to this, the role of community leaders, including in the political, cultural and religious fields, needs to be tapped more strongly. Also, the business sector has the potential to integrate sexual orientation and gender identity into the workplace and in the commercial/financial/investment/developmental field. These are also avenues for promoting the generation of more disaggregated data, linked with various indicators, to provide incentives for exemplary performance, consonant with human rights. On a related front, the Sustainable Development Goals framework provides more opportunities for various kinds of cooperation and support — particularly under Goal 17, which opens up space for more multilateral, regional and bilateral cooperation. There is the welcome vista of more South-South cooperation, as well as triangular cooperation — such as activities between States, civil society and the business sector; neither should the power of various forms of media and their reach be forgotten.

VI. Underpinnings

51. Various elements interrelate closely with the root causes and environment behind the violence and discrimination. On that matter, the underpinnings outlined in the following paragraphs will be dealt with progressively by the Independent Expert as part of a workplan and mapping exercise, in the coming years. They are discussed succinctly in the present report, as a precursor to other more detailed reports that will follow in the future.

A. Decriminalization of consensual same-sex relations

52. Laws and policies that criminalize consensual same-sex relations are part of the background environment that leads to violence and discrimination. Some 70 countries criminalize same-sex relations, with a particular impact on men who have sex with men.[28] Some 40 countries criminalize same-sex relations in regard to women who have sex with women.[29] The death penalty awaits in some countries. There are other laws and policies of a more indirect nature, which might also be negatively applied against certain groups and persons in relation to sexual orientation and gender identity. They include laws based on public decency, public health and security, at times in the guise of local criminal laws and regulations. There are equally challenging implications from various religious laws when applied strictly. Some countries also criminalize cross-dressing, such as where men dress

[28] *Living Free and Equal*, p. 54.
[29] Ibid.

up as women and vice versa, even the criminalization violates the person's self-identified gender.

53. As noted in a recent UNHCR study:

> The majority of laws criminalizing same-sex sexual activity were noted by respondents in countries in Africa, Asia-Pacific, and the Middle East and North Africa region, with a few offices also highlighting similar laws targeting transgender identity. While many respondents in the Americas and Europe reported significant progress to ensure adequate legal protection of the human rights of LGBTI persons, there nonetheless remain some countries in these regions with laws that criminalize core aspects of LGBTI expression …
>
> While laws targeting LGBTI persons may be written to criminalize specific sexual acts rather than the broader identities of persons with a diverse sexual orientation or gender identity, some offices noted that such laws may nonetheless be used to prosecute individuals who identify as LGBTI. A respondent in a country in the Middle East and North Africa region reported, for instance, that "some LGBTI people have been convicted by the authorities solely for their presumed sexual orientation", despite the fact that only same-sex activity, rather than LGBTI identity, is criminalized in the country of operation.[30]

54. There is thus a need to move towards decriminalization in respect of these laws, which regrettably help to fuel the violence and discrimination.

B. Effective anti-discrimination measures

55. Many countries are still hampered by a lack of anti-discrimination measures or insufficient anti-discrimination measures; this, too, is linked to environments that lead to violence and discrimination. This is a longitudinal challenge, which starts in the home and extends to the education system, the workplace, and life beyond. Some countries have moved towards integrating sexual orientation and gender identity into their constitutions or laws, directly or indirectly, while others have policies and programmes to reflect sexual and gender diversity. Yet, within the lesbian, gay, bisexual and transgender setting, some groups are particularly marginalized and may need special measures to help overcome difficulties. For instance, transgender persons are often discriminated against at school and this pushes them out of the educational set-up; they might then fall into a situation of marginalization and then exploitation.

56. The discrimination is also intersectional. There might be tints of patriarchy impacting on women, which also impact negatively on lesbians and women who have sex with women. There might be traces of racism, which also impact negatively on refugees and migrants who are lesbian, gay, bisexual or transgender. There might be hints of extremism that impact negatively on those who wish to have their sexual orientation and gender identity respected culturally. Even where there are laws to protect people from discrimination, there might be weak implementation. This is further tested by issues such as access to justice and mechanisms and/or personnel that could provide some assistance and remedies, and the call for transparency and accountability. There is thus a need for effective anti-discrimination measures of a comprehensive kind — not only formal but also substantive, not only de jure but also de facto — in addition to the building of a community that is open to understanding and that respects sexual and gender diversity.

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[30] UNHCR, "Protecting persons with diverse sexual orientations and gender identities: a global report on UNHCR's efforts to protect lesbian, gay, bisexual, transgender and intersex asylum seekers and refugees", p. 13.

C. Legal recognition of gender identity

57. In many countries, transgender persons are not able to have their self-identified gender recognized by the State, even with gender reassignment surgery, and have to endure lifelong abuses and discrimination. Non-recognition is interlinked with the environment that leads to violence and discrimination. In some situations, they are forced to undergo gender reassignment surgery, other medical procedures, such as psychological assessment, conversion therapy, sterilization and also divorce, with or without legal recognition of their self-identified gender. Other impediments include bureaucratic hurdles and difficulties in accessing medical care, such as hormone treatment, as well as in accessing the wherewithal of life, such as education, housing, a decent standard of living and employment opportunities. Yet, a number of countries, such as Argentina, Australia, Malta, and Scandinavian countries, are now leading the way by enabling people to have their self-identified gender recognized under national law without the need for surgery and related medical procedures, unless they opt for the latter on a non-coerced basis, and by reducing the bureaucratic hurdles along the way. On a related front, the issue of forced surgery (from a young age) also pertains to intersex persons; this is interrelated with violence and discrimination, whereby such persons are prevented from enjoying the element of choice concerning their sexual orientation and gender identity, which is an intrinsic part of the diversity of human life. There is thus a need to move towards legal recognition of self-defined gender identity without coerced methods.

D. Destigmatization linked with depathologization

58. Stigma based on sexual orientation and gender identity, and, concomitantly, violence and discrimination, may arise in a variety of situations, including in the medical and related sectors, and this is linked with the issue of pathologization. Before 1990, even at the international level, homosexuals were classified as mentally ill; this exemplified a pathologizing approach towards sexual and gender identity (looking at lesbian, gay, bisexual and transgender persons as suffering from some form of illness, mental disorder, dysphoria or incongruence), which is now increasingly being questioned. Even though the pathologization facing homosexuals/gays is now no longer the case internationally, at the national and local levels, the situation is still opaque. There are also some parts of the world where gays and lesbians are still being forced into conversion therapy in the distorted belief that this will change their sexual orientation and gender identity. In regard to transgender and intersex persons, the situation is difficult internationally, as they still fall under the International Classification of Diseases, which is now in the process of being adjusted to reduce stigma.[31] There is a further consideration as regards how to ensure sustained access to medical care and services, such as access to hormones and related treatment. The preferred approach should be to ensure access to comprehensive health care for all, without resorting to labels that give rise to stigma. The invitation to destigmatize and depathologize opens the door to more cooperation with the medical, scientific and ethics sectors, to promote shared understanding that sexual orientation and gender identity are part of the natural state of being human, and correlatively, to ensure respect for all persons without distinction.

E. Sociocultural inclusion

59. Regrettably, lesbian, gay, bisexual and transgender persons are excluded from society in many countries: the marginalization and peripheralization are part of a vicious cycle that gives rise to a host of other problems. The atmosphere that excludes people from the sociocultural environment inevitably lends itself to violence and discrimination. The case of transgender persons illustrates this: in many countries, they are often bullied at

[31] Dario Chiozzi and others, "Sexual health in the International Classification of Diseases (ICD): implications for measurement and beyond", *Reproductive Health Matters*, vol. 23, No. 46 (2015), pp. 185-192.

school, are then pushed out onto the streets and then land up in clandestine professions. They face huge hurdles in accessing other kinds of work and are challenged daily by issues such as access to health care, access to housing, getting an adequate standard of living, and personal safety.

60. Conversely, an inclusive society enables people to enjoy protection from violence and discrimination, and leaders in the social, cultural, political and other fields can have an important role in communicating, motivating and fostering that inclusiveness. Religions and other belief systems, in their sense of humanity, can be a great platform for promoting understanding and empathy — in terms of nurturing care, compassion, tolerance and respect for diversity. Yet, the situation locally often leaves much to be desired where there are approaches to and/or interpretations of doctrines or beliefs which are inconsistent with human rights; this results in sociocultural exclusion which is then channelled into situations of violence and discrimination. It should not be forgotten that exclusion, steeped in violence and discrimination, also has a social and economic cost, both for the victim and for society as a whole. This is obviously the case where such exclusion pushes people underground, for example in relation to HIV/AIDS — making disease control difficult and with ensuing health implications and economic/financial consequences for society.

F. Promotion of education and empathy

61. Lack of education and/or awareness and lack of understanding may transmute into biases, prejudices and phobias from a young age, which underlie the violence and discrimination. This is interlinked with the quality of the educational spectrum and how to nurture a sense of empathy for sexual orientation and gender identity as an inherent part of all of us. State policies vary in their openings towards the issue of sexual orientation and gender identity. While some States have tried to integrate the issue into the curriculum at different stages, others have shunned the possibility altogether. Issues related to sexual orientation and gender identity can be dealt with indirectly or directly (e.g. through health education, indirectly, and/or through specific courses focusing on sexual orientation and gender identity, directly). One entry point that is now being explored in several countries is to address the bullying, which marginalizes persons at school from childhood onwards. With the help of United Nations agencies, some countries are now breaking the ice by integrating sexual orientation and gender identity into the educational curriculum through that issue. This is a key area where international cooperation and technical support and assistance can help open doors towards a more empathetic world, both at the national level and internationally. This requires dialogue and interaction between school principals, teachers, parents and students. It invites reappraisal of both educational content and textbooks, and the building of pedagogical tools and methodology, to promote an open mindset and respect for human biodiversity.

VII. Conclusions

62. **The present report is the first report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, and its theme is "diversity in humanity, humanity in diversity". The phenomenon of violence and discrimination based on sexual orientation and gender identity is both local and global, requiring strong national and international countermeasures to promote respect for sexual and gender diversity under the umbrella of international human rights law. In recognizing that everyone has some form of sexual orientation and gender identity, there is the regrettable reality that some groups and persons are affected by violence and discrimination, precisely because they are viewed as having a sexual orientation and gender identity that is different from a particular societal norm. This is enmeshed in the political, social, cultural and economic setting of each country, which invites a context-specific analysis and understanding of each scenario. While human rights are inherent to all persons without distinction, the situations facing those groups and persons may vary; it is not necessarily homogeneous.**

63. The present report endeavours to set the scene for more monitoring and advocacy to protect people from violence and discrimination on the basis of sexual orientation and gender identity. It is also important to comprehend the multi-layered nature of the violence and discrimination — it starts at home, extends into the educational spectrum, influences the community environment, and continues into the State setting and beyond. It has a longitudinal trajectory, with intergenerational implications. It is also concurrently personal/personalized, family-based, community-influenced and systemic, and at times is linked with institutional violence and discrimination. To overcome these impediments, it is necessary to "start young" with promoting mutual respect and tolerance.

64. The report allows the approach and methodology of the Independent Expert to be gauged. There are key reflections responding to the mandate, particularly regarding (a) the panorama of the situation, including the implementation of international instruments, with identification of good practices and gaps; (b) awareness of the violence and discrimination issue, and linkage with root causes; (c) dialogue, consultation and cooperation with States and other stakeholders; (d) the identification of multiple, intersecting and aggravated forms of violence and discrimination; and (e) support for international cooperation and related services to assist national efforts.

65. Various underpinnings are singled out for particular attention to help prevent and overcome the negative elements of that environment and these will be dealt with in greater detail in future reports of the Independent Expert.

VIII. Recommendations

66. The following initial recommendations invite constructive responses from a variety of actors, particularly States, in cooperation with other stakeholders:

(a) The Independent Expert will follow progressively a workplan to map the linkage between protection against violence and discrimination based on sexual orientation and gender identity and the following key underpinnings: decriminalization of consensual same-sex relations; effective anti-discrimination measures; legal recognition of gender identity; desegmentation linked with depathologization; sociocultural inclusion; and promotion of education and empathy. He welcomes cooperation and information on these issues.

(b) For the second report, due later in 2017 for the General Assembly, the Independent Expert aims to address the key underpinnings outlined above in further detail. In this regard, Governments and other entities concerned are invited to send the Independent Expert relevant information by the beginning of July 2017 so as to enable him to prepare the next report on the basis of information from a range of sources.

(c) States are encouraged to ratify the core international human rights treaties (if they have not yet done so) and to implement them fully, including in regard to respect for sexual orientation and gender identity, in cooperation with partners. This requires a range of human rights-sensitive measures, such as laws, policies, programmes, practices, case enforcement, mechanisms and personnel, resources (material and non-material), information and monitoring, education and capacity-building, accountability and remedies, and a participatory process and broad mobilization and networking open to civil society, with space for dialogue and reforms.

(d) States are urged to follow up effectively on the various recommendations from the human rights treaty bodies, the universal periodic review and the special procedures in order to ensure improved protection from violence and discrimination on the basis of sexual orientation and gender identity. Linkage with and support for OHCHR is also important in this regard.

(e) **The Sustainable Development Goals offer an opportunity to tackle violence and discrimination, also in regard to sexual orientation and gender identity, and this opportunity should be taken full advantage of in order to ensure that no one is left behind, without exception or distinction. This avenue can allow Governments and other actors to generate data and information in a disaggregated manner so as to facilitate future planning and allocation of resources.**

(f) **There is a need to build checks and balances, especially at the national level, to prevent abuses of power and to ensure compliance with human rights. Cooperation should be explored not only with the executive branch of government, but also with parliamentarians and the judiciary, who may assist in weighing the various actions at the national level to ensure respect for international human rights standards. In parallel to this, capacity-building for law enforcers and related personnel, including through education and the integration of sexual orientation and gender identity into their educational curricula, is much needed in order to enhance understanding about sexual orientation and gender identity and about sexual and gender diversity.**

(g) **More cooperation with independent and pluralistic national human rights institutions, such as national human rights commissions and ombudspersons, should be undertaken to provide a link between international norms and national settings. These institutions should be supported, as part of the checks and balances to prevent and overcome abuses of power and human rights violations and also to promote access to justice and remedies. They should be paralleled by strong regional systems and initiatives to help advance protection against violence and discrimination on the basis of sexual orientation and gender identity.**

(h) **The work of human rights defenders and the much-needed space for civil society, including for non-governmental organizations and for lesbian, gay, bisexual, transgender and intersex groups and persons, calls for effective safeguards against incursions and reprisals from various protagonists (whether State or non-State actors) who do not comply with human rights. Cooperation with a multiplicity of actors, including community leaders (such as political and religious leaders) and those in the medical and scientific professions, the business sector and the media (e.g. social networks) should be fostered in order to protect against violence and discrimination on the basis of sexual orientation and gender identity, with that protection underscored by international human rights law. This is interlinked with the call for broad-based education, awareness-raising and action responsive to issues of sexual orientation and gender identity.**

(i) **The role of the United Nations, including the Human Rights Council and the General Assembly, is pivotal in order to raise the issue of violence and discrimination and to address it through comprehensive and holistic measures, with due regard for the recommendations of the Independent Expert as an impetus for follow-up action. United Nations human rights presences are important and need to be bolstered in countries and regions where there are major gaps in human rights protection; this is certainly also the case in regard to sexual orientation and gender identity. This should be complemented by the catalytic role of United Nations country teams and inter-agency cooperation to integrate sexual orientation and gender identity issues into programming and practices on the basis of no "protection deficit" and no "protection vacuum".**

(j) **The Independent Expert is firmly committed to building bridges, that are anchored on the mandate, with a broad range of actors and stakeholders (governmental, intergovernmental and non-governmental), and looks forward to constructive dialogue and cooperation, with more country visits — premised on international human rights law, reflective of local wisdom and resonant with the universal message of "diversity in humanity, humanity in diversity".**

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Report of the Special Rapporteur on trafficking in persons, especially women and children

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the thematic report of the Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, prepared pursuant to Council resolution 26/8. The report is focused on the efforts of multi-stakeholder initiatives and industry coalitions to address, through voluntary standards, trafficking in supply chains. The Special Rapporteur identifies and analyses main challenges in adopting voluntary standards and assurance processes that effectively facilitate the detection of trafficking in persons. On the basis of the dialogue launched with stakeholders identified within voluntary standards initiatives, she presents recommendations to multi-stakeholder initiatives, assurance providers, companies, States and donors. The recommendations are aimed at strengthening voluntary standards on trafficking in persons, the assurance processes used by multi-stakeholder initiatives to improve detection and remediation of cases of trafficking in persons, and domestic legislation on business transparency regarding efforts to combat trafficking in persons in their supply chains.

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Report of the Special Rapporteur on trafficking in persons, especially women and children

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I. Introduction

1. In the present report, submitted pursuant to Human Rights Council resolution 26/8, the Special Rapporteur outlines the activities she undertook during the period under review and presents a thematic section on the efforts of multi-stakeholder initiatives and industry coalitions[1] in addressing, through voluntary standards, human trafficking in supply chains. The Special Rapporteur would like to thank all stakeholders who participated in the consultations and follow-up for the thematic section; their insights and openness in discussing these issues made that section possible. She wishes to thank the stakeholders also for the trust they place in the mandate holder to advance debate.

II. Activities of the mandate holder

2. With regard to the activities carried out from 1 May 2016 to 31 July 2016, the Special Rapporteur refers to the most recent report she submitted to the General Assembly (A/71/303). Her activities from 1 August 2016 to 28 February 2017 are briefly outlined below.

A. Participation in conferences and consultations

3. On 19 September 2016, the Special Rapporteur participated in the high-level plenary meeting of the General Assembly on addressing large movements of refugees and migrants, and intervened during round table 6 on addressing vulnerabilities of refugees and migrants on their journeys from their countries of origin to their countries of arrival.

4. On 21 September, the Special Rapporteur participated as a panellist at a side event, held in the framework of the high-level plenary meeting, on the Migrants in Countries in Crisis Initiative and addressing human trafficking in conflict and post-conflict situations, organized by the International Organization for Migration (IOM) and the Office to Monitor and Combat Trafficking in Persons of the United States of America Department of State.

5. Also on 21 September, the Special Rapporteur participated as a speaker at the launch of Alliance 8.7, organized by the International Labour Organization (ILO). The Alliance is an inclusive global partnership with a diverse membership that aims to facilitate the strategic coordination of the diverse stakeholders interested in achieving target 8.7 of the Sustainable Development Goals. The Special Rapporteur also participated in a Wilton Park event, held from 1 to 3 February 2017, to engage in brainstorming on the governance structure of the Alliance and the next steps in its operationalization.

6. On 28 October, the Special Rapporteur presented her thematic report on trafficking during conflict and in post-conflict situations (A/71/303) to the General Assembly at its seventy-first session.

7. Also in October, the Special Rapporteur convened a meeting with representatives of social auditing organizations at United Nations Headquarters in New York, as part of a project on engaging with business actors to eradicate trafficking in persons from supply chains. More information on the project and the meeting is given below.

8. In November, the Special Rapporteur addressed the Electronic Industry Citizenship Coalition at its 2016 annual conference, as keynote speaker in a session on trends in global supply chain governance, at which participants discussed new regulatory frameworks on transparency in supply chains and the regulatory path to greater accountability of companies for labour abuses committed in their supply chains.

9. Also in November the Special Rapporteur took part in the panel discussion on international refugee protection and European responses held at the Vienna Migration

[1] For a definition of multi-stakeholder initiatives and a description of industrial coalitions, see paras. 32-36.

Conference convened by the International Centre for Migration Policy Development. She also took part in an expert group meeting on key legal concepts within the definition of trafficking in persons, convened by the United Nations Office on Drugs and Crime.

10. The Special Rapporteur, together with the Foreign Trade Association and the Electronic Industry Citizenship Coalition, co-organized a session on labour migration and trafficking in supply chains, held during the 2016 United Nations Forum on Business and Human Rights in November. The session was attended by representatives of the business community, civil society organizations and Governments.

11. On 25 November, the Special Rapporteur participated as a speaker at the high-level event entitled "New ways to tackle human trafficking for forced labour along migration routes", organized by the Geneva Centre for the Democratic Control of Armed Forces, the Organization for Security and Cooperation in Europe, the Federal Department of Foreign Affairs of Switzerland, ILO, IOM, the Office of the United Nations High Commissioner for Human Rights and the Office of the United Nations High Commissioner for Refugees.

B. Country visits

12. The Special Rapporteur visited Kuwait from 4 to 8 September and the United States from 6 to 16 December 2016, at the invitation of the respective Governments. The reports on the visits are contained in addenda to the present report. She thanks the Governments for their cooperation prior to and during the visit. She expects to visit Brazil on a mutually convenient date agreed with the Government. She is thankful to the Government of Cuba for extending an invitation for a country visit, to be conducted from 10 to 14 April 2017.

III. Strengthening voluntary standards for businesses on preventing and combating trafficking in persons and labour exploitation, especially in supply chains

A. International and national normative framework

13. States have an obligation under international human rights law to protect against human rights abuses perpetrated by third parties, including business enterprises, within their territory and/or jurisdiction. States' obligations to prevent and combat trafficking in persons are clearly established in international human rights instruments. For example, the International Covenant on Civil and Political Rights prohibits slavery and forced or compulsory labour (art. 8) and the Convention on the Rights of the Child imposes on States parties an obligation to take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form (art. 35).

14. Regarding the obligation of States to eliminate trafficking in persons under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, States parties are required to adopt such legislative and other measures as may be necessary to establish trafficking in persons as a criminal offence (art. 5). Under the Protocol, States parties also are required to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons (art. 9 (1) (a)). Under the Recommended Principles and Guidelines on Human Rights and Human Trafficking, States are requested to effectively investigate, prosecute and adjudicate trafficking, as well as to punish individuals and legal persons found guilty of trafficking by imposing effective and proportionate sanctions (principles 13 and 15).

15. Under the ILO Declaration on Fundamental Principles and Rights at Work, ILO member States have an obligation to respect, promote and realize the principles concerning the fundamental rights which are the subject of the relevant conventions, including the elimination of forced labour, regardless of whether they have ratified those conventions. In this regard, under the ILO Worst Forms of Child Labour Convention, 1999 (No. 182) States

parties are to take effective measures to prohibit the worst forms of child labour, including child trafficking. Under the ILO Forced Labour Convention, 1930 (No. 29) and Abolition of Forced Labour Convention, 1957 (No. 105), States parties have the obligation to take measures to abolish forced or compulsory labour. ILO Convention No. 29 was strengthened with the approval of the Protocol of 2014 to the Forced Labour Convention, 1930. The Protocol outlines measures for preventing forced labour and emphasizes the need for victim protection and access to appropriate and effective remedies, such as compensation. The measures States are required to take under the Protocol include supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour (art. 2 (e)). This obligation is further underscored in the ILO Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), in which States are called on to provide guidance and support to employers and businesses to take effective measures to identify, prevent, mitigate and account for how they address the risks of forced or compulsory labour in their operations or in products, services or operations to which they may be directly linked (sect. 4 (j)).

16. Regarding the obligations of States to protect against and redress the human rights impacts of business, the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework were endorsed by the Human Rights Council in 2011. In the Guiding Principles, States are requested to set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction will respect human rights throughout their operations (principle 2). While the issue of trafficking in supply chains is not specifically addressed in the Guiding Principles, in accordance with principle 17 businesses should carry out due diligence in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Pursuant to that same principle, the due diligence should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed, and should cover not only impacts related to an enterprise's own activities, but also those to which it may be linked through its business relationships.

Domestic efforts in enacting non-financial reporting obligations

17. In the past few years, at the State level, the above-mentioned due diligence principle and the need to ensure businesses accountability have been at the core of national legislation developed to respond to consumer demands for more transparency in the activities of businesses and their impact on trafficking in persons and forced labour.

18. Notable examples of this are the California Transparency in Supply Chains Act of 2010 in the United States, which came into effect in January 2012, and the Modern Slavery Act of 2015 in the United Kingdom of Great Britain and Northern Ireland. Under the California Transparency in Supply Chains Act, retail sellers and manufacturers with over $100 million in annual worldwide gross receipts who do business in the state, regardless of whether or not they are headquartered in California, are required to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale. In accordance with the Act, companies concerned must report on their efforts in five different areas: verification, auditing, certification, internal accountability and training.

19. Under the Modern Slavery Act, companies with a total turnover of over £36 million conducting business, or part of a business, in any part of the United Kingdom are required to publish an annual slavery and human trafficking statement to disclose the steps the organization has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains and in any part of its own business. Companies may also provide a statement that the organization has taken no such steps. The statement may include information on the company's structure and its supply chains, its policies and due diligence processes to combat human trafficking and slavery, specific parts of its business and supply chains that may be exposed to higher risks and steps taken to mitigate such risks, the effectiveness of such efforts, and training made available for its staff. In addition, the statement must be signed by the highest level of management. The

duties imposed under the Modern Slavery Act can be enforced in civil proceedings undertaken by the authorities.

20. Both Acts, while considered legislative breakthroughs in developing business accountability for non-financial obligations, are nonetheless not exempt from criticism. The Modern Slavery Act has been criticized for allowing United Kingdom-based companies to hide their supply chains as long as the goods they produce do not enter the United Kingdom, and the California Transparency in Supply Chains Act is considered insufficient, as it requires companies only to report their efforts with no regard for the quality of the effectiveness of the measures taken to eliminate trafficking in persons from their supply chains. In 2015, the Special Rapporteur on contemporary forms of slavery, including its causes and consequences presented a report to the Human Rights Council (A/HRC/30/35) in which those two domestic efforts were further analysed.

21. Feedback generated from consultations held with multi-stakeholder initiatives and private sector representatives indicated that while this type of legislation represents a good starting point for most companies and facilitates the mainstreaming of transparency efforts in smaller companies, more transparency is needed. In addition, private sector stakeholders consulted agreed on the need for stronger normative frameworks at the State level that would establish, based on international standards, clear expectations for businesses regarding their obligations to respect workers' rights and to protect workers from labour abuses. Stronger normative frameworks would not only help businesses to ensure that their suppliers are bound to the same level of commitment regarding the elimination of trafficking in persons and respect for workers' rights, but would also help to guarantee an even playing field for those who conduct their operations in accordance with those standards.

22. In 2012, an executive order aimed at strengthening protections against trafficking in persons in federal contracts was signed in the United States. The new amendments to the Federal Acquisition Regulation include further due diligence measures in respect of contractors and address key risk indicators, such as the use of unethical recruitment practices, in particular by prohibiting contractors from charging recruitment fees to workers and from denying employees access to their personal documents.

23. In addition to national legislative frameworks on the accountability of businesses and the effective transposition of international standards to national labour codes, the existence of national policy and legislative frameworks in other areas also plays an important role in tackling and reducing trafficking in persons and forced labour. While not directly addressing the issue of trafficking in persons, measures such as those to regulate recruitment are crucial in reducing risk factors. Indeed, in 2014 the Special Rapporteur on the human rights of migrants dedicated part of his report to the Human Rights Council (A/HRC/26/35) to the issue of recruitment in the context of labour exploitation of migrants.

24. Unfortunately, the regulation of labour recruiters and elimination of unethical recruitment practices are far from homogenous at a global scale and the level of ratification of the ILO Private Employment Agencies Convention, 1997 (No. 181) is low. Some national jurisdictions do not regulate the activities of labour recruiters, allowing a flourishing "informalization" of the industry and permitting practices such as the payment of recruitment fees by jobseekers. Furthermore, in some jurisdictions, workers contracted through employment agencies are not offered the same level of social protection as direct employees, creating a second class of workers and exacerbating the potential negative impact of the lack of regularization of this sector.

25. Regarding recruitment regulation, the ILO launched in September 2016 the non-binding ILO general principles and operational guidelines for fair recruitment, in which it is reiterated that recruitment should take place in a way that respects, protects and fulfils internationally recognized human rights, including those expressed in international labour standards, such as prevention and elimination of forced labour. The guidelines enshrine principles related to the prohibition of recruitment fees, transparency in the terms and conditions of employment, the prohibition against confiscating workers' identity documents, and contracts, among others. Another initiative, the International Recruitment Integrity System (IRIS) was launched by IOM in 2014. IRIS is a multi-stakeholder

initiative for labour recruiters that offers a certification system to recognize ethical recruiters on the basis of an evaluation of their compliance with the IHRS Code of Conduct. Based on the ILO labour standards, the Guiding Principles on Business and Human Rights and good practices in the industry, the Code of Conduct also includes principles on the prohibition of charging recruitment fees to jobseekers, respect for freedom of movement, respect for transparency of terms and conditions of employment, respect for confidentiality and data protection and respect for access to remedy.

26. Responding to a lack of State regulation and poor enforcement of international standards, as well as to consumer demand for greater levels of transparency and compliance with those standards, businesses have also tried to address these issues through a commitment to voluntary standards and assurance programmes, by establishing their own programmes or by engaging with a multi-stakeholder initiative. How trafficking in persons is addressed by such initiatives is the focus of the present report.

B. Scope of the report

27. In 2016, together with Verité, an international non-governmental organization, the Special Rapporteur, thanks to earmarked contributions received for this purpose, launched a new project building on the previous work carried out under the mandate on addressing the risks of trafficking in persons in global supply chains. The goal of the project is to reduce the vulnerability that workers face in supply chains and tackle the risks of trafficking in persons by strengthening multi-stakeholder and industry-based strategies, and to promote the catalysing effect of multi-stakeholder initiatives and industry coalitions to enhance efforts made by businesses to improve their policies and measures to address trafficking in persons and other types of labour violations.

28. In 2016, the mandate holder conducted a mapping of multi-stakeholder and industry-based initiatives active in different industries, including fishing, aluminium, electronics, coffee and tea. The mapping was a first step towards engagement with these initiatives through bilateral dialogue and two consultations. The objective was to identify and understand challenges, lessons learned and good practices in detecting and addressing trafficking in persons and labour exploitation.

29. The first of the two consultations targeted participants in multi-stakeholder initiatives and industry coalitions; the second was aimed at representatives from companies that perform social audits and other types of supply chain assessments.

30. Each consultation began with a framing of current trends in supply chains and strategies to tackle risks of human trafficking. This included a focus on the inherent complexity of supply chain production and the challenges related to enhancing visibility and accountability beyond first-tier manufacturers and producers. The subcontracting and outsourcing of diverse stages of production makes it increasingly difficult for companies to monitor and address working conditions and human rights in a systematic and comprehensive way. Industry and multi-stakeholder initiatives face the same challenges, with important consequences for the validity of their sustainability and rights-based claims. Moreover, supply chains are not only increasingly complex along product chains, but also highly stratified in terms of labour supply. Third-party recruitment and employment agencies are a growing feature of supply chain production, which has important consequences for voluntary initiatives.

31. Strategies to promote transparency in supply chains at the legislative level are enhanced by efforts to go beyond auditing in supply chain due diligence, to integrate workers' voices and empowerment through new policy, communications and grievance mechanisms, and to increase company focus on remedy and the strengthening of corrective action. These trends and others formed the basis of the consultations.

C. Voluntary standards and how they address trafficking in supply chains

1. What are multi-stakeholder initiatives and industry coalitions?

32. Multi-stakeholder initiatives are organizations that have established voluntary sustainability standards, often for a specific commodity or industry sector. They offer a common label for companies that commit to align to the principles set by the standard and that agree to be monitored under the relevant assurance programme under which their commitment to and compliance with the standards are verified. The voluntary set of standards developed under the initiative often covers a wide spectrum of sustainability concerns, ranging from environmental risks and corruption to working conditions and labour rights. Examples of the initiatives identified under the project include the Forest Stewardship Council, Fairtrade, the Aquaculture Stewardship Council, UTZ and the Aluminium Stewardship Initiative, which are also part of an umbrella organization, the ISEAL Alliance, created to strengthen these standards systems by improving their impacts, defining and advancing credibility, increasing their adoption and proliferation and improving effectiveness.

33. The governance structure of multi-stakeholder initiatives is usually composed of a wide variety of stakeholders, including businesses, their suppliers and civil society representatives. The multi-stakeholder nature plays an important role, particularly in the standard-setting process, through which stakeholders define the criteria and indicators that the initiative will use to evaluate company compliance with the agreed standard. In this regard, the quality of the criteria and indicators relating to trafficking in persons depends largely on the level of stakeholder awareness of the issue, as well as on the initiative's success in raising awareness about the standard-setting process among relevant stakeholders, in particular among those that can provide significant feedback. Ultimately, the degree to which this feedback can be integrated into the process will be contingent on the capacity to transmit to other stakeholders the importance and impact that risk indicators relating to trafficking in persons would have in their activities and on their overall performance as measured against labour-related standards.

34. In order to evaluate the compliance of companies and grant certification, if applicable, multi-stakeholder initiatives establish an assurance programme. The ISEAL Alliance defines assurance as the demonstrable evidence that specified requirements relating to a product, process, system, person or body are fulfilled. Some voluntary standards organizations use the term certification system instead. Models of assurance vary in their approach and level of rigour, which range from self-assessments to third-party auditing. Models of audit methodology may differ in terms of frequency and intensity, and with regard to the requirements auditors need to meet to perform the audit. Assurance programmes also use different scoring systems to rate applicant companies on their level of compliance with the standard. Today, many multi-stakeholder initiatives have opted for a stepwise or continuous improvement approach, rather than a pass-fail approach, and assign a prominent role to capacity-building activities that help companies to understand and tackle challenges in the implementation of the standard and in fulfilling compliance requirements.

35. Companies have also addressed sustainability concerns through industry-led initiatives. These are industry associations or coalitions that bring together companies around a voluntary code of conduct or standard and a compliance programme on sustainability issues, including human rights and labour standards. While the modus operandi is similar to that of multi-stakeholder initiatives, there may be differences in the organization of the governance structures, with businesses, including suppliers, playing a stronger role.

36. Some examples of industry coalitions are the Electronic Industry Citizenship Coalition and the Business Social Compliance Initiative of the Foreign Trade Association. The Coalition brings together companies such as Apple, HP and Intel and has developed a code of conduct and audit scope that includes extensive references to issues such as unethical recruitment practices. The Business Social Compliance Initiative is a cross-sectoral initiative that has also developed a code of conduct and an implementation plan.

including auditing, a capacity-building programme for businesses, training for suppliers, and alternative stakeholder engagement activities. As mentioned above, standards and an assurance programme alone are not sufficient to embed the standards into a company's business model. Thus, many multi-stakeholder initiatives and industry coalitions develop, in parallel, capacity-building programmes and other awareness-raising activities for their stakeholders to help promote the standards and their implementation.

2. How is trafficking in persons codified in voluntary standards?

17. Corporate codes of conduct and the voluntary standards set by multi-stakeholder initiatives and industry coalitions typically include a reference to trafficking in persons or forced labour. The trafficking in persons, or forced labour, standard is normally based on international human rights instruments and labour standards. However, the reference is often limited to a mere prohibition of the use of forced labour or trafficking in persons and is not further developed into specific indicators to help identify risk practices and define what forced labour or trafficking in persons may look like in practice.

18. As mentioned above, unethical recruitment practices and how they represent a risk of forced labour and trafficking in persons are not widely acknowledged within the private sector or among the stakeholders that participate in the standard-setting process. While some initiatives, such as the Ethical Trading Initiative or Social Accountability International, were created to uphold a strong labour rights component, others, such as the Marine Stewardship Council, were established primarily with an environmental focus. As a result, the level of sophistication in developing indicators that can effectively account for companies' risk practices in this area varies from one initiative to another. The differences among initiatives regarding their original motivation may not only have an impact in the standard-setting and revision process but may also affect a multi-stakeholder initiative's success in establishing an assurance programme that effectively monitors businesses compliance with a trafficking standard.

19. Budget constraints imposed by client companies and limitations in audit protocols with respect to worker interviews, including the practical challenges of interviewing migrant workers from diverse cultural and linguistic backgrounds, are also key concerns. Given the low levels of awareness among clients about trafficking and forced labour risks and a lack of systems for assessing recruitment and migration practices, the level of detection of trafficking in persons and forced labour cases remains low. An underlying problem identified through the dialogue with the auditing industry is the absence of representatives of that industry at standard-setting negotiations within multi-stakeholder initiatives. As a result, such negotiations can produce auditing protocols that are not effective or practical.

20. The evaluation of the competence of the auditors is also a key concern. The level of understanding of the complexities of detecting trafficking in persons, forced labour and other types of labour exploitation varies among those in the industry. The skills required to, among other things, interview workers, and an auditor's comprehensive understanding of the specific vulnerabilities of categories of workers, such as migrant or contract workers, are indispensable to ensuring adequate evaluations of a company's performance on indicators related to trafficking in persons. Unfortunately, one single team of auditors is often charged with the evaluation of the complete set of indicators, including those on other issues, such as deforestation or corruption. It is unlikely that auditors with expertise in environmental concerns would have also the same level of experience in evaluating corporate practices that represent risk indicators of trafficking in persons or forced labour, especially considering the subtle ways in which such practices may be concealed and the fact that workers themselves may be unaware of the wrongfulness of corporate practices that are perceived as common businesses practices, such as compulsory overtime or the payment of recruitment fees.

3. Criticism of voluntary standards and concerns about their effectiveness in detecting and addressing trafficking in persons

21. Voluntary standards and certification schemes are the object of criticism by some in the labour rights movement, particularly trade unions, which have claimed that such

schemes and their use of audits as a verification method have failed to protect the rights of workers.

42. Voices have been raised against the lack of worker and civil society representation in the governance structures of voluntary standards initiatives. The control that businesses may have over the participation of such actors has also been denounced as a strategy to exclude dissenting voices and bring down the level of the standards to that of the lowest common denominator practices among the businesses concerned.

43. During the consultation, private sector stakeholders expressed concern about the difficulty of designing a system that could efficiently support the efforts of companies moving at different speeds in achieving sustainability targets. It is difficult for multi-stakeholder organizations to address the capacity-building needs of those starting to implement measures to achieve baseline targets, while responding to others who are seeking a platform to launch new tools to move beyond baseline targets towards higher levels of corporate due diligence.

44. Auditing, as a way to evaluate the compliance of companies with labour standards, has also been criticized for its lack of capacity to assess the performance of companies in the long term. An audit, even the most comprehensive, i.e., when it includes worker interviews and is supplemented with information from alternative sources, such as local actors, including representatives of civil society and local trade unions, is still a snapshot, offering only a partial view of day-to-day working conditions.

45. At the same time, representatives from the auditing community raised concerns about their limited role in addressing audit findings and the implementation of their recommendations. Moreover, many of the issues that constitute the root causes of common labour abuses identified at the supply chain level, such as those related to unethical recruitment practices and compulsory overtime, are strongly connected to the behaviour and business decisions of client companies. Some representatives of the auditing community also noted the difficulties faced in bringing such concerns to the attention of client companies, given the race-to-the-bottom practice encouraged by some in the audit industry who agree to perform audits under unrealistic conditions.

46. Furthermore, given the impact that the results of an audit evaluation may have on the business relationships with suppliers, the practices of presenting model factories prepared specifically for audits and model workers coached to respond to auditors have proliferated in the past few years. These practices aggravate yet another challenge of current audit-based monitoring systems, which is the concentration of company resources in monitoring the first tier of their supply chains. It is widely acknowledged that most of the human rights violations and the worst labour abuses occur beyond the first tier of suppliers. However, few companies have extended their due diligence efforts throughout the entire value chain or to include their labour supply chains.

47. This lack of accountability at lower levels of the supply chain inhibits the multiplier effect that efforts to implement the standards should have in bringing the larger group within the industry under the same standard. Companies' leverage over their suppliers in today's complex supply chains, in which individual companies may represent a small percentage of a supplier's business share, can prove very limited if it is not accompanied by a collective action from the industry as a whole. While efforts by industry coalitions and multi-stakeholder initiatives are aimed at breaking through such barriers, current individual corporate limits on supply chain transparency hinder the use of powerful tools such as the consumer thirst for greater accountability, as lower levels in the supply chain hidden by a lack of transparency would be immune to such demands for accountability. Also, suppliers whose business relationships are predominantly with companies based in countries where there is a higher level of consumer awareness and where national legislation requires a higher degree of due diligence and transparency will respond differently to their buyers' requirements regarding compliance with human rights and labour standards than will suppliers whose main business relationships are with companies based in countries with less robust national frameworks and lower consumer demand for ethically produced goods.

48. With regard to sector transformation, industry, multi-stakeholder and certification initiatives held internal discussions on how to move beyond the engagement of a single

company or the "role" of a single supply chain towards sector-wide or market transformation to ensure that sustainability standards, including respect for human rights, are the norm in business. However, the role of such initiatives in sector transformation and their impact on national legal frameworks to promote labour and human rights has been challenged.

65. The above issues, along with the absence of good practices related to remedy for exploited workers, were raised throughout the consultation with multi-stakeholder initiatives and industry coalitions as areas for further engagement across supply chain initiatives.

D. Engaging with multi-stakeholder initiatives and auditing companies

66. The Special Rapporteur deemed it essential to engage with multi-stakeholder initiatives, industry coalitions and representatives of the auditing industry in order to discuss how they address challenges and criticisms, and, through constructive dialogue, to identify areas on which further efforts should be focused. In particular, the consultations and subsequent follow-up activities provided opportunities to enhance learning about the risks of human trafficking in supply chains, consider the strengths and weaknesses of strategies to detect and remedy trafficking in persons, identify challenges and share good practices in auditing and assessments, explore current trends in the professionalization of the auditing industry, and explore synergies between participating organizations, the Special Rapporteur, governments and civil society.

67. The two consultations revealed that multi-stakeholder initiatives, industry coalitions and the auditing community were greatly interested in collaborating with the Special Rapporteur, recognizing the instrumental role that the Special Rapporteur can play in creating a space for open and ongoing dialogue and exchanges on lessons learned and good practices. As no other platform having the same level of credibility and independence as that of the Special Rapporteur exists, representatives of multi-stakeholder initiatives and auditing companies welcomed and encouraged the continuation of the initiatives led by the mandate holder with a view to identifying good practices that can be replicated in other contexts and exploring innovative responses to common challenges.

68. Regarding lessons learned and challenges in detecting cases of forced labour and trafficking in persons, representatives of the auditing community were asked to consider the strengths and weaknesses of current audit strategies, including how auditors addressed recruitment and migration practices, how they gathered information from workers, and challenges and constraints related to client expectations.

69. It was noted that, while social audits had contributed positively to establishing a baseline understanding of human rights and labour conditions in the workplace, other forms of engagement, including training and capacity-building for compliance staff and the development and dissemination of targeted guidance on human trafficking, were equally important. Other types of assessments were also highlighted, including self-assessments carried out by suppliers to evaluate their own compliance with standards and assessments of labour supply chains to review conditions of recruitment and migration, where those conditions pose risks of, inter alia, debt bondage and forced labour for migrant workers.

70. The consultations also fostered robust dialogue on strategies and engagement aimed at promoting workers' voices and empowerment within sustainability initiatives, especially within compliance monitoring schemes, including complaints hotlines, the use of worker surveys, good practices in engaging workers during audits, training and capacity-building for workers on their rights and responsibilities in the workplace, and training on worker-management dialogue in the workplace. However, ensuring that potentially vulnerable workers, such as migrants, young people and women, were not inadvertently excluded from these new strategies was identified as a challenge.

71. Other proposed strategies to strengthen audits, improve measures to detect and provide remedy to trafficking cases, and better implement complementary efforts alongside assessments included increasing community and stakeholder engagement, improving

auditor training, strengthening initiatives to share data and information, and using new technologies to enhance information gathering, for example through information technology platforms, hotlines or other such mechanisms.

56. Representatives from the auditing community agreed to propose a red-flag approach, which would enable auditors to investigate beyond the audit scope when predefined key indicators of labour exploitation were identified. Along those lines, a mapping of the supply chain could be instrumental in identifying risk practices beyond first-tier suppliers. Such an exercise would help client companies prioritize audits on the basis of the presence of risk indicators in subcontracting practices or high-risk geographical areas and economic sectors.

57. Participants in the consultations also discussed the professionalization of social auditing, current trends and developments in the industry and industry efforts to enhance auditor capacity and performance. They examined good practices in the area of assessment, partnerships with civil society and lessons learned in complementing audits with other strategies to enhance supply chain accountability. Members of the Association of Professional Social Compliance Auditors, recently established to enhance the professionalism of individual auditors and organizations performing independent social compliance audits, have been discussing the scope of social compliance audits, the competencies required of an auditor and the requirement for an audit firm to ensure their auditors are able to perform audits and act with integrity and independence at all times.

58. The second consultation also highlighted several data-sharing initiatives aimed at helping businesses to prioritize efforts, as well as the need to record data on labour recruiters. Partnerships and the role of advocacy in the social audit industry were also discussed, as was the need for an oversight mechanism, for example an accreditation system, to ensure quality and standards across the industry.

59. Diverse means of raising grievances and having them addressed were also debated, including examples of worker hotlines and innovations in the use of smartphone technology. However, it was noted that such efforts alone, not unlike social audits, cannot solve the complex problem of human trafficking, and must be reinforced through other means of awareness-raising, capacity-building, problem identification and access to remedy. Questions were raised about the role played by local authorities in the referral and follow-up of grievances, and about how best to coordinate with such authorities, when necessary. Good practices related to the rehabilitation of trafficking victims and their reintegration into communities and labour markets was also mentioned as a topic in need of urgent attention from all relevant stakeholders.

60. Speaking to the criticism that voluntary initiatives have received on their lack of impact in terms of transforming current business models, representatives of multi-stakeholder initiatives shared promising examples of efforts carried out by some initiatives in sector transformation that illustrate the positive impact that voluntary standards can have in enhancing higher standards in national-level policies and legislation. As voluntary standards alone are not sufficient to achieve sector transformation into a new sustainable business model, innovative approaches seek to combine the efforts of the public sector and those of voluntary initiatives. Collaboration across stakeholder groups, from businesses to civil society and regulators, was acknowledged as a precondition for such transformation, as were partnerships with governments, international organizations and the broader United Nations system.

61. Participants identified several other actions and interventions, listed below, which have also helped the Special Rapporteur define areas for further engagement and work under the mandate in strengthening the strategies implemented by multi-stakeholder initiatives and industry coalitions to detect and tackle trafficking in persons:

(a) Corporate codes and policies must be strengthened to address risks of trafficking and forced labour in recruitment and labour supply chains, and must set out specific protections for migrant and other vulnerable workers;

(b) Standard-setting, multi-stakeholder and certification initiatives should be encouraged to engage a broad cross section of stakeholders, including auditors, in the design and establishment of new standards systems;

(c) Existing initiatives should be coordinated and collaboration with governments and civil society should be facilitated, especially regarding grievance mechanisms and provisions for remedies;

(d) Efforts to improve the quality of audit assessments and build the capacity of auditors to detect trafficking in persons and forced labour should be supported;

(e) Efforts to share audit information should be encouraged to allow companies to optimize resources and focus on addressing critical issues and performing audits beyond first-tier suppliers;

(f) Companies that use audits to measure supply-chain compliance are encouraged to review assessment protocols to support improvements in audit quality and create conditions to enable auditors to better identify risks of trafficking;

(g) New and better data on the risks of forced labour and trafficking in supply chains, disaggregated by region, sector and industry, is needed. Companies and auditors should be encouraged to share anonymized data from audit results;

(h) Current trends in corporate behaviour should be mapped through the analysis of audit data to gain understanding of the situation and help target stakeholder commitment;

(i) Research on the impact of non-financial reporting legislation should be collected;

(j) Dialogue with governments should be facilitated to incorporate good practices from voluntary standards into national legislation.

62. Given the potential that multi-stakeholder initiatives and industry coalitions may have to cascade corporate policies on eliminating trafficking in persons across sectors, and the role the Special Rapporteur can play in providing a powerful and neutral platform, the mandate holder will continue to explore further engagement with such initiatives, specifically to:

(a) Reinforce voluntary standards on trafficking in persons and identify good practices in that area, by providing feedback and expert advice in standard revision processes and by co-developing capacity-building activities for the initiatives and their stakeholders;

(b) Enhance workers' voices within the standard-setting process, and in monitoring mechanisms, through the identification of good practices in workers' participation in monitoring schemes and the development of capacity-building programmes;

(c) Identify good practices, and draft guidance and recommendations, for the establishment of corporate grievance mechanisms and remediation that address the needs of workers effectively;

(d) Analyse the impact that non-financial disclosure regulations have on company policies on trafficking in persons.

IV. Conclusions and recommendations

63. **The present report offers an overview of the main challenges that multi-stakeholder initiatives and industry coalitions face in helping their member companies and suppliers to eliminate trafficking in persons in their operations and supply chains. Improving awareness of trafficking in persons and risk practices among the stakeholder base is a prerequisite to establishing a standard that can effectively evaluate company performance in preventing and addressing trafficking in persons. The embedding of workers' voices as an alternative source of information on company performance must be guaranteed. Audit methodologies must be reviewed to ensure that third-party audits are performed under optimal circumstances, that the resources necessary to collect the voices of workers are allocated and that auditors have the skills necessary to evaluate trafficking in persons risk practices. Multi-stakeholder initiatives and businesses must identify solutions in order to ensure a**

voluntary standards strategy in which workers, trade unions and civil society play a central role at the standard-setting level and in monitoring schemes and corporate grievance mechanisms.

64. Voluntary standards alone are not sufficient to transform business models. Innovative approaches in sector transformation call for enhanced collaboration with governments. States must guarantee normative frameworks that, on the basis of international standards, protect workers from labour exploitation and set out clear expectations for businesses in this regard.

65. Against this backdrop, the Special Rapporteur wishes to make the recommendations listed below.

A. Recommendations to multi-stakeholder initiatives

1. Recommendations regarding the standard-setting process

66. Criteria and indicators should be strengthened in accordance with the benchmarks and indicators for ensuring trafficking-free supply chains proposed by the Special Rapporteur (A/HRC/23/48/Add.4, appendix I) and should include at a minimum the following indicators:

(a) All workers have the freedom to terminate employment at any time, without penalty, by means of reasonable notice, in accordance with national law or collective agreement;

(b) Workers are not held in debt bondage or forced to work to pay off a debt of any kind, including non-monetary debt;

(c) No fees or costs for recruitment are charged, directly or indirectly, in whole or in part, to the worker, including costs associated with the processing of official documents and work visas;

(d) Employers that engage private employment and/or recruitment agencies use only agencies that are licensed or certified by the competent public authority;

(e) Workers are provided with a written employment contract that is straightforward and understandable by the workers. Contracts for migrant workers are shared with the workers sufficiently in advance of their deployment;

(f) Contract substitution and changes that diminish originally agreed wages, benefits or other conditions of work are prohibited;

(g) Workers are paid in legal tender and provided written, itemized pay slips or receipts in a language they understand, indicating wage rates, hours worked, total pay and any legally authorized deductions made by the employer;

(h) Workers that earn wages calculated on a performance-related basis do not earn less than the legally mandated minimum wage;

(i) Wage payments are made at regular intervals directly to the worker and/or their bank account, and not delayed, deferred or withheld;

(j) Deductions made from workers' wages are lawful;

(k) Wage advances or loans provided to workers, including interest rates and repayment terms, are compliant with the law, explained to workers in their own language and agreed in advance by both parties;

(l) Workers retain full and complete control over their earnings and are free to spend such earnings at their discretion;

(m) Workers are not compelled to make use of stores or services operated in connection with an undertaking. Where access to other stores or services is not possible, employers ensure that goods and services are sold or provided at fair and

reasonable prices, without the aim of indebting or otherwise coercing the workers concerned;

(n) Mandatory residence in employer-operated residences is not a condition of employment;

(o) Withholding or confiscating passports, other identity documents or work permits is prohibited; in cases where such documents are withheld by employers or labour recruiters as per legal requirement, simple procedures are in place to allow the workers direct and immediate access to the documents at any time;

(p) Workers are not physically confined to the workplace and do not face restrictions, including psychological intimidation and/or verbal threats, on their freedom of movement outside working hours and in related premises, such as dormitories or residences;

(q) Workers, irrespective of their nationality and residence status, have the right to join trade unions and bargain collectively.

67. Multi-stakeholder initiatives should map all relevant stakeholders for each specific standard, taking trade unions into special account, and ensure they are actively involved in the determination of criteria and indicators in the standard-setting process and subsequent revisions. They should also ensure that gender considerations are embedded in the standard when specific vulnerabilities based on gender are identified within the industry or workplace affected by the standard. Multi-stakeholder initiatives should consider establishing a capacity-building programme adapted to each audience to equip stakeholders to participate in the standard-setting and standard-revision processes.

68. Multi-stakeholder initiatives should ensure that the criteria and indicators used to determine compliance with each standard are adapted effectively to the specific sector and activity the initiative covers.

69. Multi-stakeholder initiatives should develop and implement capacity-building activities to ensure that all stakeholders, including buyers, suppliers, labour recruiters, workers, civil society organizations and trade unions, especially at the local level, and their relevant partners understand the risks of trafficking in persons and labour exploitation in their activities and in those of their business partners, and should develop measures to be implemented to comply with the standards.

70. Multi-stakeholder initiatives should consider establishing a platform with all relevant stakeholders at the local level to discuss and coordinate measures to implement the standards, challenges in the implementation and solutions.

71. Multi-stakeholder initiatives should coordinate with other standards systems owners to ensure that all standards on trafficking and labour exploitation are consistent with international human rights instruments and labour conventions, and avoid duplication of members' efforts in demonstrating compliance with the standards by sharing and coordinating assessment processes and results.

72. Multi-stakeholder initiatives should cooperate with State authorities by sharing lessons learned and experiences in standards implementation, to analyse gaps in regulations and State policy regarding the elimination of trafficking in persons and promote the adoption of a relevant legal framework and effective law enforcement measures.

2. Recommendations regarding the assessment process

73. In establishing an assurance programme or certification system, multi-stakeholder initiatives should engage with workers and trade unions to ensure that their concerns and feedback are taken into consideration and that they are informed of the procedures through which they can provide input. Engagement should take place not only during the assessments, but also during pre-audit consultation, the assessment of assurance providers, the review of policies and procedures, and dispute resolution.

74. **The assurance programme must not only be based on third-party audit mechanisms but also use monitoring schemes that include workers and trade unions as an alternative source of information to allow an ongoing assessment of compliance with the labour-related standards. If necessary, multi-stakeholder initiatives should develop specific guidance to ensure that potentially vulnerable workers, such as migrants, young people and women, are not excluded from monitoring mechanisms.**

75. **The assurance programme must require that, during auditing exercises or alternative monitoring mechanisms to assess indicators of labour exploitation, sufficient time be allocated for auditors to interview workers, that any necessary interpretation services be provided, that any arrangements necessary to address gender concerns be made, that interviews be held outside the workplace if possible, and that sufficient time be allocated for document review, management interviews, interviews of other relevant stakeholders, such as local trade unions and communities, and report writing.**

76. **Multi-stakeholder initiatives should define indicators to assess the risk level of clients and determine the intensity and frequency of audits. Such indicators should take into account elements such as State ratification and enforcement of relevant international conventions on human rights and labour standards; the existence of regulatory regimes that regulate recruitment activities in accordance with international standards and guidelines; the level of informality within the economic sector in which the client operates; the percentage of vulnerable groups in the client's workforce, including the number of migrant, temporary, seasonal, contractual or home-based workers; the level of complexity of the client's labour supply chains; and client's previous record on these issues.**

77. **Multi-stakeholder initiatives should ensure that an evaluation of labour recruiters, when such recruiters are used by the supplier to recruit workers or as employment agents, is included in the assurance process and that the above-mentioned criteria and indicators that are under the control of those intermediaries, as recruitment or employment agents, are applied. The results of the evaluation of the labour recruiters' compliance should be made an integral part of the evaluation of the company's compliance and have an effect on the determination of certification status.**

78. **Multi-stakeholder initiatives should ensure that assurance providers and auditors have demonstrated knowledge and experience in assessing compliance with labour-related standards and in interviewing workers on an ongoing basis. When risk indicators are identified, the initiatives should consider requiring the collaboration of assurance providers and auditors with civil society organizations that are specialized in victim identification and that provide specialized services for trafficked persons. Multi-stakeholder initiatives should ensure that specialized services address gender concerns and that services are offered to both men and women. They should also consider including forced labour and human trafficking experts in oversight bodies.**

79. **Multi-stakeholder initiatives should provide specific training to auditors and assurance providers on trafficking in persons to improve their skills in risk detection and evaluation of risk indicators; the training should also cover how to interview workers and should raise awareness of worker vulnerabilities, including those related to gender or migration status.**

80. **Multi-stakeholder initiatives should consider engaging with auditors and other monitoring mechanisms when designing and establishing auditing protocols and monitoring modalities to ensure that they are effective for identifying risk indicators in practice.**

81. **Multi-stakeholder initiatives should develop specific deep dive audit protocol modules on trafficking in persons indicators and guidance to be used when predefined red flags of trafficking and forced labour are first detected, allowing auditors to enlarge the audit scope and uncover the full extent and depth of the problem.**

82. **Non-conformity with human trafficking and forced labour standards should entail suspension of certification or any other envisioned sanction of a similar nature**

and level of severity. A stepwise plan should be established together with the companies to ensure that issues of non-conformity are corrected and workers are not negatively affected by the sanction applied.

B. Recommendations to assurance providers and auditors

83. Assurance providers and auditing companies should ensure that auditors performing workplace assessments are trained in identifying and evaluating risk indicators of trafficking in persons, forced labour and labour exploitation, including risks related to unethical recruitment practices.

84. When performing an audit, assurance providers and auditing companies should ensure that sufficient time is allocated to interviews with workers and worker representatives, that gender concerns are appropriately addressed and that sufficient resources are allocated to engaging interpreters to support auditors when necessary.

85. In the event that the audited company uses labour recruiters, a specialized audit protocol should be in place to assess the risks in their recruitment practices.

86. Assurance providers and auditing companies should supplement information obtained through worker interviews and document reviews with alternative sources of information, including from trade unions and civil society stakeholders who are active in the sector and region.

87. Assurance providers and auditing companies should consider sharing aggregated data on audit results with governments and other relevant stakeholders to support government-level strategies in combating trafficking in persons for labour exploitation that are based on empirical evidence.

C. Recommendations to companies

88. Companies should establish and implement a company policy on the elimination of trafficking in persons from the company's supply chains or adhere to a multi-stakeholder initiative or industry coalition that addresses trafficking in persons and forced labour in accordance with the recommendations set out in the present report. The policy must be part of the company's larger human rights policy commitment and the continuous human rights due diligence the company conducts in accordance with the framework established in the Guiding Principles on Business and Human Rights. Adherence to the policy must be recognized by the highest level of management in the company. A company establishing its own policy should seek the collaboration of workers, trade unions and civil society to formulate the policy and implementation measures that effectively address issues related to trafficking in persons.

89. In selecting new suppliers, companies should develop an evaluation mechanism that takes into account a supplier's compliance with the policy the company has adopted or to which it adheres, by establishing risk indicators such as those mentioned in the recommendations set out above for multi-stakeholder initiatives on strengthening criteria and indicators. Companies should widely communicate among potential bidders the conditions for selection.

90. Companies should integrate their policies on trafficking in persons, forced labour and any other form of labour exploitation as a binding part of contracts with suppliers. Communication should be clear regarding the application of sanctions in the event of non-compliance by the supplier itself or issues of non-compliance found further down in the supplier's supply chain, including in their labour supply chain. Sanctions may include the immediate termination of a contract where grave violations of workers' rights are found. A stepwise plan should be established together with the supplier to ensure that issues of non-compliance are corrected and that workers are not negatively affected by the sanction applied. The plan should include specific

timelines and deliverables in order to make it possible to measure improvement in the implementation of the company's policy.

91. Companies should review and modify purchasing practices that could have a negative impact on the workplace conditions of their suppliers, including the setting of delivery deadlines that will expose workers to non-voluntary overtime or force suppliers to hire workers for peak periods under worse working conditions or through employment agencies.

92. Companies should consider publicly disclosing the names of their suppliers, as well as policies and measures implemented to ensure the compliance of suppliers to the company policy, with reference to, inter alia, cases of non-compliance and corrective action taken.

93. Companies should map the labour supply chains of their suppliers to identify risks, especially regarding recruitment practices; request full disclosure of the names of suppliers' contractors; and develop and implement a capacity-building programme for suppliers to improve their awareness of risk indicators and to assist them in implementing measures to demonstrate their compliance with the company's standards and policies on trafficking in persons and forced labour, including measures for monitoring the practices of their labour recruiters.

94. In cooperation with other businesses and suppliers, and after an evaluation of risk indicators and a mapping of suppliers' supply chains, companies should invest in the assessment and monitoring of second-tier suppliers. Also in cooperation with other businesses and suppliers, companies should establish a capacity-building programme to improve the compliance of second-tier suppliers with standards on trafficking and forced labour.

95. Companies should establish or participate in an operational-level grievance mechanism, in accordance with the Guiding Principles on Business and Human Rights, and cooperate with State-based judicial and non-judicial grievance mechanisms. In designing and establishing the mechanisms, companies should engage with workers, with worker representatives and with civil society organizations that have expertise in issues of trafficking in persons and labour exploitation.

96. Companies should establish a remediation plan in cooperation with the supplier and local and national authorities when a case of trafficking in persons is detected, in order to ensure that workers have effective access to remedies, including compensation, and to appropriate assistance. Any measure adopted should have a human rights-centred approach and be based on the rights of the trafficked person, whose participation in the determination of a solution for their case should be ensured throughout the process. Companies should ensure that, with regard to access to the grievance mechanism and the remediation plan, they consider the specific barriers faced by, and the vulnerabilities of, migrant workers, contract workers, young people and women.

D. Recommendations to States

1. Ratification of international instruments

97. States should ratify all relevant international instruments prohibiting trafficking in persons, forced labour, slavery and slavery-like practices, including the Protocol of 2014 to the Forced Labour Convention, 1930, align their domestic legislation with international standards, criminalize all forms of trafficking in persons and impose adequate penalties for violations.

2. Legislation on transparency

98. States should:

(a) Adopt effective legislation requiring transparency in supply chains, human rights due diligence throughout supply chains, public reporting and disclosure

by businesses, as well as measures relating to procurement practices, and guarantee the implementation of such legislation;

(b) Establish sanction mechanisms for companies that fail to fulfil their obligations, and equip law enforcement agencies with the resources necessary to follow up on reports of lack of compliance;

(c) Make publicly available the lists of companies that are subject to legislation on transparency;

(d) Develop and release guidance materials prior to the entry into force of the legislation to support companies in understanding the requirements;

(e) Enhance legislation on transparency, which should require companies to disclose actual measures adopted to tackle trafficking in persons in their operations and supply chains. Such measures should address at the minimum certain areas of concern, such as recruitment practices, methodology used in monitoring compliance with the company policy, use of alternative sources of information to supplement audit information, the quality of the grievance mechanism, and coordination with relevant stakeholders, including trade unions and civil society representatives;

(f) Encourage knowledge-sharing activities with multi-stakeholder initiatives through, inter alia, the establishment of platforms for the exchange of experiences, lessons learned and good practices on voluntary standards that can help in strengthening national and local strategies to enforce and monitor labour standards.

3. Regulation of labour recruiters

99. States should protect workers against human rights abuses perpetrated in the recruitment process by employers, labour recruiters and other enterprises. This requires that States take appropriate steps, through effective policies, legislation, regulations and adjudication, to prevent and investigate such abuses, to punish those responsible and to provide redress, and that they exercise and mandate due diligence to ensure that human rights are respected.

100. States should adopt, review and, where necessary, strengthen national laws and regulations and consider establishing, regularly reviewing and evaluating national fair recruitment commitments and policies, with the participation of employers' and workers' organizations.

101. States should ensure that relevant legislation and regulations cover all aspects and stages of the recruitment process, and that they apply to all workers, especially those in a vulnerable situation, and for all types of jobs.

102. States should ensure compliance across the recruitment industry with the relevant laws and regulations. Such measures should include public registration, licensing or other regulatory systems. The systems should be effective and transparent and should allow workers and other interested parties to verify the legitimacy of recruitment agencies and placement offers.

103. States should ensure that there is an effective and sufficiently resourced labour inspectorate, and that its staff is empowered and trained to investigate and intervene at all stages of the recruitment process and employment for all workers and all enterprises, and to monitor and evaluate the operations of all labour recruiters.

104. States should ensure that legislation covering recruitment activities clearly prohibits the charging of recruitment fees and related costs to workers and jobseekers.

105. States should ensure that employment contracts are clear and transparent and are respected, and should require and ensure that written contracts of employment are provided to workers specifying the job to be performed and the terms and conditions of employment, including those derived from collective agreements. The contract, or an authoritative copy, should be in the language of the worker or in a

language the worker can understand, and the necessary information should be provided in a clear and comprehensive way in order to allow the worker to express his or her free and informed consent. Contracts for migrant workers should be provided sufficiently in advance of their departure from their country of origin. The contracts should not be substituted and should be enforceable in the destination country. While respecting confidentiality and the protection of personal data, Governments may consider the use of information technology to achieve the above-mentioned objectives. In the absence of a written contract, States should ensure that all rights of recruited workers are respected in accordance with existing legislation and regulations.

106. States should ensure workers have access to free, comprehensive and accurate information regarding their rights and the conditions of their recruitment and employment.

4. Access to remedy

107. States should ensure that workers have rapid and affordable access to grievance and other dispute resolution mechanisms that enable them to address alleged abuses and fraudulent practices in recruitment and employment without fear of retaliatory measures, including blacklisting, detention or deportation, irrespective of their presence or legal status in the State, and to appropriate and effective remedies where abuses have occurred. States should also ensure, through judicial, administrative, legislative or other means, that when abuses related to recruitment and employment occur within their territory and/or jurisdiction, those affected have access to effective remedies, which may include, but should not necessarily be limited to, compensation. Pending the investigation or resolution of a grievance or dispute, whistle-blowers or complainants should be protected and migrant workers should have timely and effective access to procedures. States should ensure that these mechanisms can be accessed across borders after a worker has returned to his or her country of origin.

108. States should promote policies aimed at identifying and eliminating barriers to effective access to grievance and other dispute resolution mechanisms, such as complex administrative procedures, unreasonable costs, fear of discrimination or retaliation and dismissal and, in the case of migrant workers, fear of detention or deportation.

5. Legislation on migration

109. States should abolish and replace employer sponsorship systems that bind every worker to an employer as a sponsor and that create a situation of vulnerability that favours abusive and exploitative work relationships leading to trafficking in persons.

110. States should develop and increase the number of alternative options for regular and safe migration and for legal employment of migrant workers.

111. States should ensure full recognition of the rights of all workers, including migrant workers, to join and form trade unions and to bargain collectively.

112. States should ensure that bilateral and multilateral agreements on labour migration include mechanisms for oversight of recruitment of migrant workers, are concluded between countries of origin, transit and destination, as relevant, and are implemented effectively. States should also ensure that such agreements are consistent with internationally recognized human rights, including fundamental principles and rights at work, and other relevant international human rights instruments and labour standards. Agreements should also contain specific mechanisms to ensure international coordination and cooperation, including on consular protection, and to close regulatory and enforcement gaps related to recruitment across common labour migration corridors.

113. States should equip embassies abroad to provide services to migrant workers, especially channels for consultations and complaints.

6. Research

114. **States should invest in research and the collection and analysis of data on the scope and prevalence of trafficking in persons for labour exploitation in supply chains, specific commodities, sectors, the informal economy and domestic production as the foundation for effective policy and strategy formulation by both public and private sector actors.**

E. Recommendation to donors

115. **Donors should contribute to support the mandate of the Special Rapporteur on trafficking in persons, especially women and children, to enable the mandate holder to continue to pursue the work described in the present report, particularly in the areas identified for further engagement with multi-stakeholder initiatives and industry coalitions.**

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Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Kuwait*

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Kuwait from 4 to 8 September 2016. In her report, she highlights the country's commitment to combating trafficking in persons, as evidenced by its legal framework addressing human trafficking, its institutional framework and the establishment of a women's shelter for domestic workers. She nonetheless expresses concern about the focus on trafficking for the purpose of labour exploitation relating mainly to domestic work, the neglect of possible trafficking of some migrant workers in other sectors, and trafficking for the purpose of sexual exploitation. Other concerns include the absence of a national strategy to combat trafficking, the restrictive national immigration policy focused on rapid deportation of migrants in irregular situations, which does not provide the opportunity for accurate identification and provision of assistance to victims of trafficking, the placement of victims in shelters where their freedom of movement is restricted, and the low prosecution rates for trafficking cases.

The Special Rapporteur makes a number of recommendations to the Government, including with regard to ratification of key international legal instruments, strengthening of national legislation and policies to combat trafficking, including through the revision of existing immigration policies and the abolition of the kafala system, which contributes to trafficking. The Special Rapporteur encourages the Government to expedite the adoption of an anti-trafficking policy and the establishment of an intergovernmental body to coordinate the work of combating trafficking in collaboration with civil society organizations and international organizations. She proposes that the Government address gaps in the assistance provided to victims of trafficking, especially by providing them with effective remedies and increasing the involvement of civil society organizations in the provision of assistance to victims. She notes the need to increase capacity-building activities for government officials and calls on the Government to improve the justice delivery system and strengthen its cooperation with source countries to address the root causes of trafficking and create more opportunities for safe migration.

* The present report was submitted after the deadline so as to include the most recent information.

Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Kuwait**

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** Circulated in the language of submission and in Arabic only.

I. Introduction and methodology

1. The Special Rapporteur on trafficking in persons, especially women and children, Maria Grazia Giammarinaro, visited Kuwait from 4 to 8 September 2016, at the invitation of the Government. The objectives of the visit were to examine the prevalent forms of trafficking in persons in the country and to assess the effectiveness of measures taken by the Government to combat trafficking in persons and to protect the human rights of trafficked persons.

2. During her visit, the Special Rapporteur met high-level officials from the Ministry of Justice, the Ministry of Social Affairs and Labour and the Public Authority for Manpower. She also had exchanges with members of the Anti-Trafficking Unit and the Domestic Labour Department of the Ministry of the Interior. She interacted with members of the judiciary from the Supreme Court, the plenary court and the Public Prosecutor's Office and representatives of the Kuwait Institute for Judicial and Legal Studies.

3. She visited the government shelter for migrant workers, run by the Public Authority for Manpower, the women's prison, private nurseries for children of women prisoners, and the immigration detention centre for women. She met with representatives of civil society organizations and United Nations agencies and programmes, and members of the diplomatic community. She concluded her visit by delivering the closing statement at a joint Ministry of the Interior and International Organization for Migration (IOM) training course on cybercrime and its linkages to trafficking in persons.

4. The Special Rapporteur expresses her gratitude to the Government for its invitation and cooperation and to civil society organizations for their valuable input.

II. Main findings

A. Forms and manifestations of trafficking in persons

5. The strong economy of Kuwait relies on and attracts approximately 3 million migrants. Of the total expatriate population in Kuwait, as at June 2016, some 2.5 million people were of working age, between 15 and 59, some 1.7 million of whom were from Asia alone.[1] The largest migrant communities in Kuwait are from India (825,000), Egypt (517,971), the Philippines (185,788), Bangladesh (183,265) and the Syrian Arab Republic (180,000).[2] These migrants willingly embark on the journey to Kuwait in search of better employment opportunities, mostly in the domestic service and construction sectors. Kuwait is also home to a stateless population of 93,000 persons known as "bidoons",[3] who fall into three broad categories: (a) those whose ancestors failed to apply for nationality or lacked the necessary documentation when Kuwait gained independence in 1961; (b) those recruited to work in the Kuwaiti army or police force during the 1960s, who settled permanently in Kuwait, along with their families; and (c) children of Kuwaiti mothers and stateless or foreign fathers.[4]

6. Kuwait faces challenges as a destination country for women and men, mainly from South Asia, South-East Asia and Africa, who are subjected to trafficking in persons for the purpose of labour and to a lesser extent, sexual exploitation.

7. The causes of trafficking include poverty and a lack of economic opportunities in source countries, but also the high demand for cheap labour and services in Kuwait, including a huge demand for domestic work for middle- to high-income households. The sponsorship (kafalah) system contributes to trafficking by binding migrant workers to their

[1] See http://stat.paci.gov.kw/awarepoint/#/Data/1495/acc/Column/Sum/endAge.

[2] See www.bq-magazine.com/economy/socioeconomic/2015/08/kuwaits-population-by-nationality.

[3] See www.unhcr.org/statistics/unhcrstats/576408cd7/unhcr-global-trends-2015.html.

[4] See www.hrw.org/report/2011/06/13/prisoners-past/kuwaits-bidun-and-burden-statelessness.

employers through residency and work permits for legal stay in Kuwait (see sect. B below).[3] Employers have the power to report runaway migrant workers before the workers are able to submit their claims to the Department of Domestic Workers. That leaves the migrant in breach of immigration laws, even without proper evidence of the reason that caused the worker to run away, thus subjecting runaway migrant workers to deportation.

8. Moreover, the restrictive immigration policies in Kuwait and the absence of an adequate framework for asylum or specific considerations for refugee claims further expose migrant workers to protection risks relating to the renewal of their residence permits. That leads to denial of access to health services, education and employment, and to arrest and administrative deportation. Additionally, limited access to "article 17 passports",[5] which provide only for religious, medical or educational travel of stateless persons under specific conditions, leads them to rely on traffickers and smugglers for travelling and working outside the country.

9. Traffickers' modi operandi typically involve deceptive and fraudulent practices regarding the nature and type of employment, conducted by unscrupulous recruitment agents in source countries and in Kuwait, and by employers. Most commonly, victims are exploited through breaches of contract, excessive recruitment and working permit fees normally borne by employers, reduction or non-payment of wages, long working hours and a lack of rest days. Many victims of trafficking find themselves in a situation akin to debt bondage, trying to repay exorbitant debts owed to traffickers for their journey when promises of well-paid employment turn into exploitative situations. Despite the existence of laws prohibiting passport and wage retention, both are also common practices that limit the freedom of movement of migrant workers.

1. Trafficking for labour exploitation

10. As at June 2016, migrant workers in Kuwait constituted 77 per cent of the total working population.[7] While not all migrants are subject to trafficking, cases of labour trafficking in Kuwait involve mainly low- and semi-skilled migrant workers from South and South-East Asia, the Middle East and increasingly North, East and West Africa, working mainly in the domestic service and construction sectors. Moreover, in the construction sector in Kuwait, there are allegations of forced labour of workers from the Democratic People's Republic of Korea, in situations that are sometimes akin to labour trafficking.[8]

11. The Special Rapporteur learned about the practice in some companies of sponsoring or recruiting migrant workers for non-existent jobs. The fraudulent sponsor makes a profit while the workers find themselves stranded in the host country, often in debt, with no job and forced to look for irregular work under exploitative working and living conditions. Workers are also required to pay the bogus "employer" fees to renew their work and residence permits in order to enable them to stay in the country. That illegal situation creates the conditions for desperate workers to become targets for labour trafficking.

12. Additionally, while there are arrangements for some bidoons to work, many bidoons, refugees and asylum seekers, including women and children, are not authorized to access the labour market in Kuwait and are lured into illegal employment in order to support their families, which renders them vulnerable to exploitation, including trafficking for sexual and labour purposes.

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[3] Post-visit information received indicated that a draft law on the transfer of domestic workers was under consideration.

[5] Temporary travel documents issued to bidoons, valid for specific journeys pursuant to art. 17 of Law No. 11/1962.

[7] See http://stat.paci.gov.kw/arabic/reports/#DataTabPlace:ColumnChartGendrAge.

[8] See the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea (A/70/362), paras. 26 and 27, and United States of America, Department of State, *Trafficking in Persons Report 2016*.

2. Trafficking for domestic servitude

13. Over 600,000 migrant domestic workers, accounting for over 21 per cent of the migrant workforce, are estimated to live in Kuwait. The majority are women, most of whom are from Ethiopia, the Gambia, Ghana, India, Indonesia, Nepal, Nigeria, Senegal, Sri Lanka and the Philippines. While not all domestic workers are victims of trafficking, a large number of those women and girls are trafficked into domestic servitude by employment agencies in their home country or Kuwait, or by employers in Kuwait. The Special Rapporteur received reports of migrant women who are college graduates and trained professionals who had been deceptively recruited with offers of high salaries as nurses, private tutors or in the hotel industry, and who find themselves employed as domestic workers. Others are taken by their employers to Saudi Arabia and left there to work, in contravention of Kuwaiti labour laws.[9]

14. Many fall victims to debt bondage when they take on an initial debt as part of the terms of employment. Widely reported abuses and exploitation that further contribute to the trafficking situation include breaches of contract, excessive recruitment fees, non-payment of wages, deductions from low wages, excessive hours with no rest days and the withholding of passports. At the hands of their and their employers' families, many domestic workers experience physical and mental abuse ranging from being deprived of food to beatings, sleeping on kitchen floors or balconies, being pushed off apartment balconies, being confined in houses, being prohibited from accessing health care and outside communications, harassment, sexual assault and psychological abuse, including racism and xenophobic statements. The Special Rapporteur learned that employers, who incur costs to sponsor domestic workers, wrongly see such actions, especially the withholding of passports, as "guarantees" for getting their money's worth in terms of work and preventing escapes.

15. Domestic workers who have left an abusive employment relationship are referred to by the authorities and employers as "runaway" or "escaped" workers and are liable to imprisonment and deportation, unless they have submitted their complaints to the Department of Domestic Workers before their employer submits an absconding report to the police. A number of obstacles prevent domestic workers from lodging such complaints, including unfamiliarity with their rights, the language, and the lack of cooperation by some Kuwaitis who identify them as runaways. Victims are immediately detained on the grounds that they have absconded, or employers sometimes lodge false reports of theft as punishment. Until recently, those workers were either returned to their employers or imprisoned and deported rather than being offered protection and alternative employment, including in sectors other than those for which they were recruited. Since the establishment of the government shelter, many of them have received some assistance after being referred there by the Department of Domestic Workers.

16. Employment agencies also play a role in the trafficking of domestic workers. That includes physically and psychologically abusing migrant domestic workers shortly after their arrival in Kuwait in order to frighten them and discourage them from leaving or complaining about their employers. It is also common for domestic workers who have left their employment or complained about exploitation to be forcibly returned either to their abusive employers or new employers after facing further abuse by recruitment agents. Besides using deception to recruit migrant workers on the basis of unenforceable contracts and non-existent positions, recruitment agencies also promise employers that they will provide them with workers who are well-trained, but who turn out to be unskilled.

3. Trafficking for sexual exploitation

17. The demand for sexual services and the existence of a large migrant worker community contribute to trafficking of women and girls for sexual exploitation in Kuwait. Both perpetrators and victims are mainly from Nepal, the Philippines and Sri Lanka.[10]

[9] See Law No. 68/2015, art. 46.

[10] Information provided by the Ministry of the Interior during the Special Rapporteur's visit.

18. Young women are lured from their home countries with false promises of legal work in Kuwait, such as domestic work, childcare and waitressing, by employment agencies that take advantage of their vulnerable and disadvantaged situations. When they refuse to accept their working conditions in Kuwait, they are returned to the employment agencies, which confiscate their passports and force them to provide sexual services to repay the debts incurred for their travel. If they refuse, they are beaten up and threatened. If they go to the police, they risk imprisonment then deportation for immigration offences or soliciting prostitution, or both. Those who go to the government shelter are provided with protection until their case is finalized.

19. Additionally, domestic workers who leave a position in which the working conditions are exploitative or who are in search of better-paid employment and who are not provided with another domestic work posting by their employment agencies become migrants in irregular situations in Kuwait and risk detention and expulsion. Their immigration status renders them particularly vulnerable to trafficking for sexual exploitation in private or closed houses by employment agents, so-called "boyfriends" or other migrants whom they approach for help.

4. Other forms of trafficking in persons

20. Refugees, asylum seekers and stateless persons in Kuwait lack recognition of their status or the ability to work legally in Kuwait, which is not a signatory to the 1951 Convention relating to the Status of Refugees or the 1967 Protocol thereto.[11] Restrictive immigration policies expose refugees, particularly those who face difficulties in renewing their residence permits for reasons beyond their control, to different protection risks including the inability to obtain education, employment opportunities, health services, freedom of movement and access to justice. That in turn makes them easy prey for unscrupulous traffickers and employers who exploit them with impunity. Their children are also liable to domestic servitude and to being lured into selling goods on the street in dangerous conditions and may be subject to the worst forms of child labour, including through trafficking by those who prey on their need for financial security (see CRC/C/KWT/CO/2, paras. 70 and 72).

B. Criminalization of irregular migration and the impact on trafficked persons

21. The economy of Kuwait relies to a large extent on the low- or semi-skilled labour of migrant workers, particularly in the domestic service, construction and sanitation sectors.

22. Kuwaiti immigration policy requires all migrant workers to possess a work permit, which is renewed periodically, usually annually, biennially or less frequently, and a residence permit obtained by their employers.[12] That sponsorship system (kafala) creates an unequal power dynamic between the employer and the migrant worker that prevents migrants from changing employers and from leaving Kuwait, which increases the migrant worker's risk of being trafficked. If they escape or report their exploitative conditions, employers can simply revoke their work permit and file absconding charges with the police, leaving migrants in irregular situations liable to lose their livelihood and be expelled from the country either through judicial deportation or an appealable administrative deportation.[13] In some cases, migrant workers' vulnerability to exploitation is heightened when employers fail to secure or renew their permits or when they are made to work in a sector other than the one for which they were issued a permit.

[11] Nevertheless, Kuwait provides assistance and protection, including free education, health care, employment, housing and food provision, to some refugees and asylum seekers on a case-by-case basis, in collaboration with the Office of the United Nations High Commissioner for Refugees.

[12] The Aliens Residence Law, issued by Amiri Decree No. 17 of 1959 and amended by Laws No. 6/2011 and No. 41/2014, provides the legal framework for the country's immigration policies.

[13] See Amiri Decree No. 12/1959 on the Aliens Residence Law, art. 16-22, and Domestic Workers Law No. 68/2015, art. 51.

23. Moreover, the Special Rapporteur was informed that, in order to dissuade domestic workers from running away, absconding charges are sometimes maliciously filed unbeknown to them,[14] even while they are still working for their sponsor. Those cases leave the migrant workers liable to detention for up to six months, the payment of fines of up to KD 600 and expulsion.[15] Often, migrants cannot pay the fines, as some have not been receiving wages. In such cases, they remain in prison and are then deported. While the Domestic Labour Department within the Ministry of the Interior provides for the extension of visas until the case is settled and for exemption from judicial charges at all levels of judicial proceedings,[16] including those involving human trafficking, the Special Rapporteur was informed that, instead of pursuing such procedures, abused migrant workers often opt for deportation to look for employment elsewhere in order to support their families.

24. Refugees and stateless persons are also at risk of trafficking in persons. They are affected by the absence of specific frameworks and considerations of their circumstances, as well as the current immigration policies.

25. In order to promote safer labour migration, the Government has promulgated labour laws protecting the rights of workers, including migrant domestic workers, and established standard employment contracts. It has entered into bilateral memorandums of understanding with several countries (see sect. J below), which facilitate and provide legal avenues for migration and the recruitment of migrant workers from source countries. Furthermore, in an attempt to regularize the situation of migrant workers in irregular situations who are already in the country, the Government, through periodic regularization processes, has issued residence permits to those who wished to stay in the country and has deported those who wished to go back to their countries, without prosecution. It is noteworthy that the handling of migrants in irregular situations by Kuwait has occasionally become an issue of contention with source countries. For example, Indonesia has in the past banned its nationals from migrating to Kuwait.

C. Legislative, policy and institutional framework

1. Legislative framework

(a) International and regional framework

26. Kuwait is a party to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime and other international human rights instruments, including the Slavery Convention of 1926, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It has also ratified the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105) and the Worst Forms of Child Labour Convention, 1999 (No. 182) of the International Labour Organization (ILO).

27. Regrettably, Kuwait is not a party to the 1951 Convention relating to the Status of Refugees, the 1967 Protocol thereto, the 1954 Convention relating to the Status of Stateless Persons or the 1961 Convention on the Reduction of Statelessness. It has, however, concluded a cooperation agreement with the Office of the United Nations High Commissioner for Refugees (UNHCR) that sets the parameters for cooperation on the issue of refugees and asylum seekers. Kuwait has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families or the Domestic Workers Convention, 2011 (No. 189), the Protocol of 2014 to the Forced Labour Convention, 1930, or the Private Employment Agencies Convention, 1997 (No. 181) of ILO.

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[14] Employers engaging in such malicious activities are criminally liable and are suspended from recruiting other domestic workers for six months.

[15] See Amiri Decree No. 12/1959 on the Aliens Residence Law, art. 14.

[16] See Domestic Workers Law No. 68/2015, arts. 33 and 36.

(b) National framework

28. At the national level, slavery and forced labour are prohibited under article 42 of the Constitution of Kuwait.

29. Law No. 91/2013 on Combating Trafficking in Persons and Smuggling of Migrants includes a definition of trafficking in persons (art. 1 (4)) similar to that contained in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the Palermo Protocol). Trafficking in persons carries a penalty of a minimum of 15 years' imprisonment (art. 2). A heavier penalty of up to life imprisonment is provided for if the offender is related to the victim, is part of an organized criminal group or holds a public position, if severe harm is caused to the victim and if the crime is committed using a weapon, among other situations (art. 2). The death penalty is provided for in cases in which the victim dies.[17] Harbouring individuals directly or indirectly involved in such crimes is also penalized (art. 4). Failure to inform the authorities about plans to commit a crime of trafficking is punishable by three years' imprisonment and a fine of KD 1,000-3,000 (art. 7). Provision is also made for the seizure of the proceeds of trafficking (art. 5). Trafficking offences committed by legal persons entail the same penalties mentioned above and can lead to the closing of businesses and possible criminal responsibility (art. 6).

30. Other legislation may also be invoked to prosecute trafficking or trafficking-related offences. Under the Criminal Code (Law No. 16/1960), punishable offences that may amount to trafficking and other forms of exploitation include: kidnapping, which is punishable by imprisonment of up to 15 years and/or payment of a fine (arts. 178-183); illegal detention of a person, punishable by imprisonment for up to 3 years and/or payment of a fine (art. 184); and bringing a person into or out of Kuwait for the purpose of selling that person as a slave, or buying, offering for sale or making a gift of a person as a slave, which is punishable by up to 5 years' imprisonment (art. 185).

31. Rape is punishable by imprisonment for 15 years or for life (art. 186). However, marriage is a form of reparation for women survivors of rape (art. 182). Prostitution is criminalized with up to 2 years' imprisonment and a fine (art. 200) and solicitation of prostitution is punishable by up to 2 years' imprisonment and/or a fine (art. 204). Under article 203, running or establishing premises for the purposes of prostitution and living off the proceeds of prostitution is punishable by up to 7 years' imprisonment and/or a fine. Inducing a person to engage in prostitution with the use of force, threats or deception is punishable by up to 7 years' imprisonment and/or a fine (art. 201).

32. The labour framework in Kuwait consists of periodically updated legislation regulating migrant work. Law No. 6/2010 on the private sector sets out minimum labour protection standards for private sector employees including migrant workers, except domestic workers. The labour framework prohibits the recruitment of children under the age of 15 and provides safeguards when children over 15 years are hired. It also provides guarantees of wage protection, working hours, paid leave and overtime pay.

33. Domestic workers and similar categories of workers were provided with labour rights for the first time under Law No. 68/2015, including the right to a weekly and monthly day off, 30 days of annual paid leave, a 12-hour working day with rest, an end-of-service benefit at the end of a contract, and payment of residence and work permit fees by the employer. However, the law does not explicitly state that workers may leave the household during their time off. While the law took the positive step of prohibiting employers from confiscating domestic workers' passports, penalties for passport confiscation, other than a maximum one-year ban from sponsoring domestic workers (art.

[17] In many States, imposition of the death penalty involves clear violations of international norms and standards, including disrespect for fair trial guarantees and due process, particularly with regard to the executions of juvenile offenders, in violation of the Convention on the Rights of the Child. Other violations include imposition of the death penalty for alleged crimes that do not meet the threshold of "most serious crimes", execution after a very long period on death row, and a failure to ensure that consular services are provided to foreign nationals. As such, there is a need to repeal the death penalty in law.

22) are not specified. Furthermore, employers are prohibited from passing recruitment expenses on to domestic workers and are required to pay the worker's travel costs and the associated fees of the recruitment agency. They may also be blacklisted and prohibited from issuing work visas in cases of abuses.[18] Domestic workers are also guaranteed judicial redress for payment of unpaid wages. Ministerial Decree No. 2194/2016 establishes a minimum wage for domestic workers of KD 60 (equivalent to US$ 200), placing domestic workers on the same minimum wage as other workers under the labour law. Nevertheless, the practice of setting salaries on the basis of the nationality of the domestic worker, which amounts to discrimination, is still prevalent. Decree No. 378/2016 allows migrant workers to transfer their sponsorship to a new employer without their current employer's consent after three years of work, provided they give their current employer 90 days' notice. Overall, the enforcement of existing labour laws regarding migrant workers is lax. Employers of domestic workers are rarely prosecuted for offences relating to passport retention, residence fees and other acts prohibited under Domestic Workers Law No. 68/2015 or other laws.

34. Employment agencies are subject to increased regulation that stipulates their obligations vis-à-vis the Government, employers and workers. All licensed recruitment agencies are prohibited from charging workers any amount for their recruitment or employment, either directly or indirectly.[19] While they are registered and licensed by the Ministry of Commerce and Industry, their work is monitored by the Public Authority for Manpower. As of 2016, a new standardized labour contract regulates employer-migrant worker relations in the private sector, the agencies' licences and fines. However, new complaint mechanisms are still unspecified and in general, the implementation of such regulations is considered largely ineffective

35. Perhaps the most innovative approach towards dealing with forced labour of migrant workers, particularly labour trafficking, comes with the establishment, under law No. 69/2015, of a closed joint stock company for the recruitment and employment of domestic workers. The partly government-owned recruitment company will regulate the recruitment process of domestic workers, including the amount of recruitment fees, be responsible for training workers before their arrival in Kuwait, ensure workers are medically fit to work, and maintain a confidential, comprehensive database of their personal information.

2. Policy framework

36. At the time of the Special Rapporteur's visit, the national strategy for combating trafficking in persons had not been finalized, three years after the promulgation of the anti-trafficking law. She is concerned about that delay and encourages the Government to expedite the preparation and issuance of the anti-trafficking policy, which she learned was being drafted in collaboration with all stakeholders.

37. In addition, the country's immigration policy, including the criminalization of workers in irregular situations, which may include victims of trafficking, has a clear impact on the prevalence of trafficking (see sect. B above). The absence of an asylum framework and specific considerations for refugees, as well as the policy on stateless persons (bidoons), further render those groups vulnerable to human trafficking.

3. Institutional framework

38. Besides a national committee headed by the Ministry of Justice with a mandate to establish the national anti-trafficking strategy, Kuwait does not have an interministerial body to address human trafficking. The Special Rapporteur learned that a number of committees, including a national case conference committee composed of the Ministry of the Interior, the Ministry of Social Affairs and Labour, the Public Authority for Manpower and the Ministry of Health, which used to meet weekly to coordinate anti-trafficking action relating to the protection for migrant domestic workers, had recently been dismantled. She

[18] Standard recruitment and employment contract for domestic workers (2010), art. 5 (5).

[19] Law No. 68/2015, Ministry of the Interior Resolution No. 1182/2010 amending some provisions of Ministerial Decision No. 617/1992, art. 11.

cautions that the absence of such mechanisms makes for incoherent coordination of anti-trafficking work within and across the relevant authorities, service providers and civil society organizations, to the detriment of the protection of and support for trafficked persons.

39. The department for the protection of public morals and to counter human trafficking, established in 2014 within the General Department of Criminal Investigation at the Ministry of the Interior, investigates cases of trafficking and prosecutes traffickers. It also undertakes capacity-building and awareness-raising activities in collaboration with international organizations such as IOM.

40. The Public Authority for Manpower oversees the employment of persons working in the private and the oil sectors, including by regulating the recruitment, transfer and registration of migrant labour, monitoring employers' compliance with labour law and undertaking joint labour projects with the United Nations Development Programme (UNDP), ILO and IOM. Whereas the Ministry of Social Affairs and Labour deals with labour issues involving companies, the Domestic Labour Department within the Ministry of the Interior issues and renews licences to domestic workers, oversees the recruitment process, undertakes labour inspections and settles disputes between employers and domestic workers. The Special Rapporteur cautions that the regulation of labour issues by three different government institutions causes fragmentation and different levels of protection for migrant workers. She is particularly concerned that the fact that labour issues relating to migrant domestic workers are handled by the Ministry of the Interior sends the erroneous signal that migrant domestic workers are not considered to be part of the workforce, but as potential criminals.

41. Furthermore, the Kuwait Institute for Judicial and Legal Studies plays a role in combating trafficking in persons by providing training to its staff, law enforcement and judiciary officials, in cooperation with international organizations.

42. All those institutions play a positive role in combating trafficking. However, the Special Rapporteur observed that the coordination of work among government bodies remained a challenge, owing partly to the lack of a national anti-trafficking strategy, but also the varying level of commitment to the issue of trafficking among those institutions, and their understanding of trafficking. Moreover, while some civil society organizations engage in combating trafficking on an ad hoc basis, there is a need for a coordinated approach between civil society organizations and the Government to jointly address the scourge of trafficking in persons.

D. Identification of trafficked persons

43. Officers of the department for the protection of public morals and to counter human trafficking are primarily responsible for identifying trafficked persons, in collaboration with other departments within the police force and the labour inspection authorities. The Special Rapporteur notes with concern that the identification of victims is undertaken on ad hoc basis in the absence of standard operating procedures.

44. Between 2015 and mid-2016, 13 victims of trafficking for sexual exploitation were identified, most of whom were from Nepal, the Philippines and Sri Lanka. Two of them were children.[20] All the victims were identified during a police raid. No cases of trafficking involving stateless persons, refugees or asylum seekers, who are prone to exploitative situations including forced labour, were identified.

45. From the 2,288 labour inspections conducted in the private and the oil sectors between 2015 and mid-2016 by the 300 inspectors from the Labour Inspection Department of the Public Authority for Manpower, 72 cases of trafficking for labour exploitation were identified in the construction sector.[21] Those figures suggest that cases involving confiscation of passports, withholding of wages or other elements about which the Special

[20] Information provided by the Ministry of the Interior during the Special Rapporteur's visit.

[21] Information provided by the Public Authority for Manpower during the Special Rapporteur's visit.

Rapporteur was informed and that are indicators of labour trafficking are often misidentified owing to the absence of clarity on what constitutes trafficking for the purposes of labour exploitation. The lack of identification of victims of trafficking for labour exploitation may also be partially explained by the disproportionately low number of labour inspectors in the country with sufficient training to identify labour trafficking. Inspection is also concentrated in the private and the oil sectors. While 1,855 inspections were conducted in agencies employing domestic workers in 2015, no inspections are conducted in private homes, where some 21 per cent of the workforce is employed in Kuwait and where clear indicators of trafficking for domestic servitude abound.

46. The Anti-Trafficking Unit maintains a national helpline dedicated to trafficked victims that operates 24 hours a day, 7 days a week. The helpline is available in Arabic, English and French, despite the fact that trafficked persons in Kuwait mostly speak other languages. The Public Authority for Manpower also has a toll-free hotline for complaints on a number of issues relating to labour violations.

47. Given the influx of migrant workers, refugees and asylum seekers and the Kuwaiti immigration policy based on repatriation of undocumented migrants, the Special Rapporteur is concerned that victims of trafficking may not be identified or are misidentified as migrants in irregular situations, resulting in their arrest, detention and deportation. In that regard, international organizations such as IOM should be given access to detention centres and complaints departments to assist authorities in identifying victims of trafficking. There is also a need for accurate identification of actual and potential victims of trafficking from among domestic workers in the government shelter (see sect. E below), using identification tools such as indicators of human trafficking developed in accordance with the Delphi method.[22]

48. Furthermore, the regularization processes for workers in irregular situations that are periodically granted by the authorities provide a good opportunity for trained personnel to identify victims of trafficking.

E. Protection

1. Shelters

49. In December 2014, the Public Authority for Manpower established a shelter for migrant workers to protect those who have been exploited by their employers and have nowhere to go. The shelter accepts walk-ins and referrals by embassies, non-governmental organizations (NGOs), government institutions and international organizations, 24-hours a day. Between March 2015 and March 2016, the shelter provided care to around 4,915 female migrant domestic workers. The Special Rapporteur commends the role played by the shelter, which can accommodate up to 500 female domestic workers and follows up their cases for possible voluntary repatriation or re-employment by another employer.

50. Protection for identified or potential victims of trafficking in the shelter is provided on the basis of a referral from the Counter-Trafficking Department. Victims are provided with legal, medical and other support services in collaboration with government departments, NGOs and international organizations. The shelter staff also communicates with the employers to retrieve withheld travel documents and obtain payment for return tickets. In cases where the women do not have travel documents, the shelter also contacts their embassies in order to facilitate the issuance of new travel documents.

51. The work of the committed and dedicated staff in the shelter is limited by a lack of standard operating procedures for the provision by trained staff of comprehensive support, including psychological and legal support to victims of trafficking and exploitation. For instance, although persons in the shelter who are presumed to have been trafficked come from various countries and speak different languages, there are no on-site interpreters available to assist them on a daily basis.

[22] A methodology used to reach consensus on indicators of human trafficking.

52. What is perhaps more alarming is the limited freedom of movement of victims of trafficking who receive assistance in the shelter; they can leave the shelter definitely only after signing a discharge form, at their request. That can prove dangerous in cases where absconding or other criminal charges exist against them as they do not benefit from any protection outside the shelter. Otherwise, leaving the shelter and returning is not allowed, except for specific reasons and if accompanied by police officers. The Special Rapporteur is concerned that, in effect, such shelters are equivalent to detention centres and the protection measures in place result in further violations of victims' human rights. She stresses that the personal freedom of people living in the shelter must be respected at all times during their stay.

53. Some civil society organizations have the capacity to provide protection and assistance to victims of trafficking. For instance, their support is sought for free legal and other assistance, although that is often provided on ad hoc basis.

54. Moreover, some embassies, such as those of India, Indonesia and the Philippines, provide temporary shelter and assistance to their exploited workers, including trafficked individuals seeking refuge after having fled abusive employers.

2. Non-criminalization of trafficked persons

55. Immunity from criminalization is not specifically provided for trafficked persons for offences committed in relation to or induced by their status as victims of trafficking, although it would be possible to provide such exemptions on a case-by-case basis under the general exception part of the Penal Code. However, migrant victims of trafficking who are found to have violated the Residency Law, for example, by staying in the country beyond the validity of their permit or because their work permit was not processed by their employer, do not benefit from exemption from deportation. In addition, the criminalization of persons who are forced into the sex industry deters victims of trafficking for the purpose of sexual exploitation from reporting to the police.

56. As a result, many migrants in irregular situations are afraid to contact the authorities, whether directly or online, and avoid seeking available legal protection and remedies, even when they are entitled to them. In fact, that approach leads to the criminalization of victims for crimes they have committed while being trafficked and for which they should not be held liable.[23]

F. Investigation, prosecution and punishment

57. The Public Prosecutor conducts investigations on the basis of preliminary information provided by the Counter-Trafficking Department and labour inspectors and files the trafficking case with the court, under articles 12 and 13 of the anti-trafficking law. In the meantime, victims in need of protection are referred for medical assistance in hospitals or to shelters.

58. The Special Rapporteur acknowledges the positive measures that have been taken to investigate trafficking cases since the promulgation of the anti-trafficking law in 2013. They include several training sessions, such as the mandatory human trafficking course for newly hired judicial officials, including prosecutors and judges, on-site exchange of experience with international counterparts and the development of a training manual on investigation of trafficking cases in coordination with entities including the Kuwait Institute for Judicial and Legal Studies, IOM and other international organizations for a uniform approach to dealing with cases of trafficking. Moreover, the importance given to addressing cases of human trafficking is also reflected by the fact that the Public Prosecutor is specifically mandated to prosecute all cases involving human trafficking, including when crimes carry a sentence of fewer than three years. Additionally, exemption from paying court fees is granted to domestic workers who wish to undertake judicial pursuit of cases concerning labour exploitation, including trafficking.

[23] See the Principles and Guidelines on Human Rights and Human Trafficking.

59. Nevertheless, a number of factors have hampered the effective and swift investigation of trafficking cases, including limited coordination among enforcement agencies. The lack of an accurate understanding of the complex and recently outlawed crime of trafficking, and how to separate cases of trafficking from labour, immigration and other crimes, also clearly emerged during the discussions the Special Rapporteur had with interlocutors from the judiciary and law enforcement. In that regard, concerns affecting the investigation and adjudication of possible trafficking cases include the insufficient capacity of prosecutors and officers of the Counter-Trafficking Department to implement the recent anti-trafficking law, despite the fact that they have undertaken several training courses. The lack of clarity about what constitutes trafficking for forced labour also affects the investigation and adjudication of possible trafficking cases and leads to perpetrators being indicted and eventually convicted for other crimes with less severe punishments. The lack of communication with some trafficked persons owing to language barriers also affects investigation. Moreover, the kafala system and the fear of absconding charges set up by employers against employees discourage migrant workers from lodging complaints, even in the face of grave violations, in order not to be deported and lose their much-needed income. As such, the overwhelming majority of forced labour cases are settled through mediation, which includes repatriation and the restitution of full or partial wages and identity documents.

60. As a result, prosecution rates are low. According to the Public Prosecutor's Office, nine cases of trafficking were prosecuted between 2015 and mid-2016. Of those, final convictions were obtained for four human trafficking cases involving the sexual exploitation of six female migrants and one other conviction was obtained for imposing slavery-like working conditions on one migrant worker.[24]

61. The authorities also cited the reluctance of victims to cooperate with law enforcement agencies as one of the main reasons for the low prosecution rates. While noting that assistance to victims should be provided irrespective of their collaboration with the authorities,[25] the Special Rapporteur wishes to highlight that short reflection periods with the possibility of extension, lengthy trials and limited legal counselling and representation, interpretation assistance and information on the case, as well as limited freedom of movement from the shelters, the inability of victims to work while in the shelters, fear of reprisals when reporting traffickers, detention for immigration-related offences and deportation are factors that further discourage victims of trafficking from collaborating with the enforcement authorities. The impunity of employers who subject migrant domestic workers to trafficking or who illegally hold their passports is another strong disincentive that leads migrant workers to opt out of judicial proceedings. The limited possibilities to file cases of trafficking in courts when victims already have an absconding charge against them contribute to the impunity of traffickers and perpetuate the abuses faced by victims who abandon the case and leave the country in order to earn a living elsewhere.

62. Furthermore, the Special Rapporteur cautions against assigning blame or responsibility for abuses against trafficked persons only to traffickers outside of Kuwait, particularly employment agencies in countries of origin and transit where deceptions first occur and continue throughout the victims' ordeal. That removes the accountability of institutions in Kuwait that are also part of the trafficking chain.

[24] Information provided by the Public Prosecutor during the meeting with the Special Rapporteur.

[25] A human rights approach to trafficking emphasizes assistance for trafficked persons, making them eligible to receive services and benefits regardless of their immigration or other status or their ability or willingness to cooperate with law enforcement officers and prosecutors.

G. Redress

63. Compensation and restitution are an integral part of effective remedies for victims of trafficking under international human rights law and standards.[26] In Kuwait, compensation for victims is not specifically addressed in the anti-trafficking law. Nevertheless, assuming victims are aware of their rights and benefit from legal assistance, it is possible for them to file separate civil and criminal claims for compensation, although information on such cases was not available at the time of the Special Rapporteur's visit.

64. Another important means of redress specifically for victims of labour trafficking is the recovery of unpaid wages. While not provided for under the anti-trafficking law, victims of domestic servitude and exploited domestic workers may nevertheless raise claims against their employers and employment agents with the Domestic Labour Department of the Ministry of the Interior[27] or with the Ministry of Social Affairs and Labour for claims concerning wages or other payment due to them. The domestic workers' shelter and the Counter-Trafficking Department have also been assisting some victims to obtain their unpaid wages.

65. Extension of the validity of the residence permit is envisaged for domestic workers whose complaints for unpaid wages are pending.[28] However, that applies only in cases where an absconding charge has not been filed by the employer before the worker lodged a complaint to the Domestic Workers Department. The practice of employers filing absconding charges unbeknown to the employee who is still working for them is prevalent and can result in the criminalization of victims of trafficking instead of the protection to which they are entitled. Moreover, the Special Rapporteur is of the view that in such cases, absconding charges should be reversed and residence and work permits should be granted to victims (regardless of whether absconding charges are filed against them) as an appropriate form of remedy, at least during the reflection period and during the criminal, civil or administrative proceedings, or even longer if return is not in the victim's best interest.

H. Repatriation and reintegration

66. While the anti-trafficking legislation does not specifically spell out the type of assistance provided to identified victims of trafficking with regard to their repatriation and reintegration, an assisted voluntary return and reintegration programme for trafficked persons was being piloted by the Public Authority for Manpower and the Ministry of the Interior, with the assistance of IOM.

67. The programme involves a screening interview to identify victims of trafficking, followed by individual counselling to help the trafficking victim to acquire or develop skills to cope with and adjust to the immediate circumstances with a view to full recovery. That is followed by a pre-return risk assessment, which checks the potential level of risk to which victims of trafficking and their families are exposed, and the likelihood of retaliation against those who have escaped their traffickers. A pre-departure medical check assesses the medical condition of victims to determine whether any health problems could hinder their safe travel. Once consent and return risk assessment results have been obtained, travel is arranged and paid for by the authorities, embassies and IOM.

68. Reintegration is also provided as part of the pilot to provide for victims' safe, dignified and sustainable reinsertion into society and a normalized life in their home country. The reintegration assistance given to victims of trafficking includes health-care services, reinsertion into the educational system, vocational training, help to set up a microenterprise, job placement, wage subsidies and housing. The Special Rapporteur was

[26] Art. 6 (6) of the Palermo Protocol and guideline 9 of the Principles and Guidelines on Human Rights and Human Trafficking.

[27] See Domestic Workers Law No. 68/2015, art. 33.

[28] Ibid.

pleased to learn that after their return, victims' reintegration is monitored through regular contact with IOM to ensure that it is effective.

69. Under the programme, all identified victims, of whom there were 24 at the time of the Special Rapporteur's visit, were returned.

70. The possibility of reinsertion of trafficked persons within Kuwaiti society is not provided for, either in law or in practice, although trafficked persons by virtue of their status as victims are entitled to reintegration as part of their stay in the country, under the Palermo Protocol. Such reintegration assistance makes it less likely that victims of trafficking will be retrafficked.

71. The Special Rapporteur was informed of the possibility for trafficked persons who wished to remain in the country to change employers and continue working in the same industry for which their employment permit was originally issued. While that is an encouraging initiative, it may be applicable to only a very limited number of victims of trafficking: those without an absconding charge by their employers, those with valid work and residence permits and those trafficked only for labour exploitation. Moreover, victims of trafficking who were deceptively promised jobs in the hotel industry but found themselves working as domestic workers cannot transfer to employment in the hotel sector, for which they have training and experience, because it is impossible to transfer from the domestic workers' visa to the private sector visa.

E. Prevention

1. Public awareness

72. The Government has taken a number of measures aimed at preventing trafficking in persons. Several capacity-building activities for law enforcement and government officials, including Kuwaiti diplomats, the judiciary, the media, migrant workers and employers, were held in collaboration with Ministry of the Interior, the Public Authority for Manpower, the Ministry of Social Affairs and Labour and the Kuwait Institute for Judicial and Legal Studies. NGOs, international organizations such as IOM, ILO and UNDP, as well as some embassies, also contribute to the dissemination of information. Officials have gained experience on practical ways to tackle trafficking during knowledge-sharing visits to other countries. Despite the increased attention devoted to the issue, trafficked persons, those at risk of being trafficked or otherwise exploited, their employers and employment agencies are still not fully aware of what human trafficking is or how to get assistance.

73. Addressing demand is another prevention strategy, which, in the context of Kuwait, means primarily demand for exploitative labour of migrant workers, including domestic workers. There is a critical need to continue raising the awareness of employers and employment agencies about the labour rights of all workers under international human rights law and standards in order to avoid trafficking. At the same time, there is a need to stop the practice of withholding migrants' passports. The regulation, licensing and monitoring of recruitment and employment agencies has yet to be effective in preventing the exploitation of migrant workers. The closed joint stock company for the recruitment and employment of domestic workers (see para. 35 above) could bridge the gap created by the demand for domestic work in Kuwait. The Special Rapporteur encourages the Government to establish that innovative institution promptly.

74. There is also a critical need to raise awareness about other forms of trafficking, including internal trafficking, trafficking of children and trafficking for the purpose of sexual exploitation.

2. Safe migration

75. Current immigration practices focus on criminalizing rather than protecting the migrant labour force, which includes victims of trafficking, refugees and asylum seekers who lack formal recognition in Kuwait.

76. The Special Rapporteur wishes to reiterate that more opportunities for safe migration, that is, regular, gainful and non-exploitative migration, are needed if Kuwait is to effectively address the demand for exploitable labour and fulfil its obligations to respect, protect and promote the labour rights of all workers, including migrants.

3. Public-private partnerships

77. The Special Rapporteur was pleased to learn about the ILO regional fair migration project (Jan. 2016-July 2018),[77] which is being implemented in partnership with the Ministry of Social Affairs and Labour, and aims to promote regular migration, including fair recruitment, and the elimination of forced labour and trafficking for labour exploitation. The project promotes policy change for fair migration, supports improved implementation of laws and policies, and addresses discriminatory attitudes and actions towards migrant workers particularly focusing on the construction and domestic work sectors, in which low-skilled migrant workers predominate.

78. However, information about endeavours to address human trafficking in businesses that employ large numbers of migrant workers, including in the hospitality and the oil sectors, was not available. Preventing trafficking for the purposes of labour exploitation and other types of exploitation should be the aspiration of all ethical businesses in Kuwait, be they national, international or multinational.

J. Cooperation and partnership

1. Cooperation with civil society

79. The contribution of and collaboration with civil society organizations are crucial in the fight against human trafficking. Coordination with services provided by civil society organizations is at present incoherent owing to the lack of a permanent interministerial committee or structure and of a national anti-trafficking action plan. Only a very limited number of civil society organizations contribute on an ad hoc basis to anti-trafficking work in Kuwait, particularly in the provision of assistance to victims. There is a need to take immediate steps to establish the necessary legal framework and support to enable a larger pool of potential service providers and civil society organizations to provide protection and assistance to victims, including by running shelters and providing counselling and training to victims.

2. International, regional and bilateral cooperation

80. Kuwait has concluded a number of memorandums of understanding on labour migration and trafficking with countries such as Egypt, India, the Philippines and Sri Lanka and works closely with embassies of other countries. Kuwait also benefits from cooperation with the United Nations and with international and regional organizations in areas such as training, assistance to victims of trafficking, repatriation and awareness-raising.

81. Internationally, Kuwait benefits from exchanging information, including on good practices in the area of trafficking in persons. Officials in charge of the shelter for victims of trafficking have benefited from their counterparts' experience in the protection of victims' rights during study tours to Belgium, the Netherlands and Yemen.

82. At the regional level, Kuwait co-chairs the Abu Dhabi Dialogue on labour mobility between countries of origin and destination.[78]

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[77] See www.ilo.org/wcmsp5/groups/public/---arabstates/---ro-beirut/documents/publication/wcms_516544.pdf.

[78] See www.iom.int/abu-dhabi-dialogue.

III. Conclusions and recommendations

A. Conclusions

61. The Special Rapporteur commends the efforts of Kuwait to prevent and fight trafficking in persons. The establishment of the Anti-Trafficking Unit within the Ministry of the Interior and the government shelter for migrant workers run by the Public Authority for Manpower are two important marks of its commitment to end human trafficking. The country's anti-trafficking legislation and its periodically revised legal framework on migrant labour, including domestic work on which its economy relies heavily, also form part of its efforts to combat trafficking. However, better implementation along with regular monitoring and enforcement are needed.

62. Human trafficking in Kuwait is perceived as mainly involving labour exploitation of non-Kuwaiti citizens, with little attention paid to trafficking for the purpose of sexual exploitation, which can involve Kuwaitis, migrants, refugees, asylum seekers and the stateless bidoon population. The restrictive immigration policy focused on rapid deportation of migrants in irregular situations does not provide the opportunity for accurate identification of or provision of assistance to victims of trafficking. The kafala system, which binds workers to employers, creates vulnerabilities and facilitates abusive and exploitative work relationships, leading to human trafficking in the domestic and other sectors. There is a capacity gap in terms of the ability to quickly and accurately identify victims of trafficking. The rate of prosecution of trafficking cases remains very low, perpetuating the impunity of traffickers and obstructing victims' access to justice. In the absence of a national strategy to combat trafficking and standard operating procedures, it is difficult to address trafficking in a coordinated manner.

63. The Special Rapporteur is seriously concerned that the conditions under which victims of trafficking are allowed to stay in shelters may amount to detention. In addition to infringing human rights relating to freedom of movement and protection from arbitrary detention, these conditions curtail victims' personal freedom, which should be guaranteed at all times. Staff in the shelters, despite being committed, require continued specialized training and capacity-building. While acknowledging the Government's efforts to raise awareness about trafficking, the Special Rapporteur notes that prevention is still at an early stage and does not target all the population at risk, including refugees, asylum seekers, stateless persons, domestic workers, employers and employment agencies.

B. Recommendations

64. On the basis of the above findings, and in a spirit of cooperation and dialogue, the Special Rapporteur offers the following recommendations to Kuwait:

(a) Ratify without delay the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families of 1990, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the ILO Domestic Workers Convention, 2011 (No. 189) and the ILO Protocol of 2014 to the Forced Labour Convention;

(b) Establish and, where already in existence, implement bilateral and multilateral agreements for the exchange of information, mutual legal assistance and safe returns in order to jointly tackle the root causes of trafficking in persons;

(c) Continue working with source countries to ensure prevention and awareness-raising.

87. **With regard to the national framework:**

(a) **Finalize and rapidly adopt, after consultation with all stakeholders, a national anti-trafficking plan of action taking a human rights and victim-centred approach, with clear objectives, responsibilities and indicators to measure progress, and allocate a dedicated budget for its implementation;**

(b) **Enforce labour regulations in order to provide greater protection to migrant workers, including domestic workers, as well as refugees, asylum seekers and stateless persons (bidoons) seeking employment, in accordance with international legal standards. Ensure that frequent inspections are conducted in trafficking-prone sectors and in households;**

(c) **Abolish and replace the kafala sponsorship system, which binds every worker to an employer as a sponsor and creates a situation of vulnerability that favours abusive and exploitative work relationships leading to human trafficking in the domestic work and other sectors, such as construction;**

(d) **Develop and increase alternative options for regular and safe migration, and for legal employment of migrant workers in the country;**

(e) **Centralize all issues relating to labour, including migrant labour, under one government institution, ensuring that domestic work is shifted from the Domestic Labour Department within the Ministry of the Interior to the Public Authority for Manpower;**

(f) **Fast-track the establishment of the closed joint stock company for the recruitment and employment of domestic workers provided for in Law No. 69/2015 to prevent trafficking of domestic workers;**

(g) **Carry out a national baseline study in collaboration with independent research institutes, bilateral partners and civil society to document the scope and trends of trafficking at the national level. Ensure that the study addresses all forms of human trafficking, its causes and consequences, particularly trafficking involving refugees and asylum seekers, as well as internal trafficking of Kuwaitis;**

(h) **Establish a systematized and harmonized data-collection system to include victims' countries of origin, sex, age and the nature and type of trafficking involved. The system should also include information on traffickers and data on investigations, prosecution rates and sentencing.**

88. **With regard to identification, training and capacity-building:**

(a) **Urgently establish standard operating procedures for the identification of all forms of trafficking and referral of victims, defining indicators to look out for while screening vulnerable persons, including Kuwaitis, undocumented migrants, refugees, asylum seekers and stateless persons;**

(b) **Ensure that victims of trafficking can be identified, even when they are in immigration detention centres, in order to avoid their repatriation and revictimization;**

(c) **Establish appropriate tools and indicators to enable labour inspectors to identify victims of trafficking during labour checks, including in the construction and sanitation sectors and in households, accompanied by immediate protection measures for victims of forced labour;**

(d) **Continue providing comprehensive training programmes on trafficking in persons to enhance the knowledge and awareness of all stakeholders, including police, immigration, customs and maritime officers, labour inspectors, prosecutors, judges, lawyers, employers, employment agencies, civil society organizations and the media, in cooperation with the Kuwait Institute for Judicial and Legal Studies and international institutions;**

(e) **Continue training all service providers involved in the assistance and care of victims of trafficking.**

89. **With regard to support services for victims of trafficking:**

(a) **Protect and assist all victims of trafficking, including victims of labour trafficking and domestic servitude, with full respect for their human rights;**

(b) **Establish a shelter for male victims of trafficking, with adequate funding and provision of appropriate assistance;**

(c) **Make provision for unconditional and appropriate assistance, including social, psychological, medical and legal support, as well as translation assistance and interpretation services in shelters, in accordance with article 6 (6) of the Palermo Protocol. Ensure that victims living in shelters have freedom of movement, access to employment and residence in the country;**

(d) **Enable adequately funded service providers and civil society organizations working to address trafficking in persons to manage shelters and provide comprehensive assistance, such as social, psychological, medical and legal support, as well as translation and interpretation services, for victims of trafficking. Achieve without delay more effective collaboration with civil society organizations;**

(e) **Provide victims of trafficking who do not wish to return to their countries owing to fear of retribution, hardship or retrafficking with viable alternatives to remain and work legally in Kuwait, including through granting special residence and work permits;**

(f) **Establish tools with clear procedures and safeguards to avoid revictimization during the process of repatriation, reintegration and reinsertion of trafficked persons in Kuwait, the source country or a third country;**

(g) **Ensure that the free 24-hour trafficking hotlines are accessible in the languages that may be the only ones that potential victims speak and that they are serviced by multilingual staff who have received specialized training on trafficking in persons;**

(h) **Maintain close cooperation with regional and international organizations, particularly IOM and UNHCR, as well as diplomatic missions, for the safe return of trafficked victims to their country of origin, having due regard to the need, if any, for international protection of the victims and the application of the principle of non-refoulement;**

(i) **Establish a national fund that will provide for a comprehensive compensation scheme for victims of trafficking;**

(j) **Ensure that appropriate procedures are in place to evaluate the best interests of the child during the stage of identification, protection and assistance and before making any decision on the eventual repatriation of children.**

90. **With regard to prosecution:**

(a) **Improve the justice system to ensure speedy investigation and adjudication of cases of trafficking while guaranteeing fair-trial rights consistent with a human rights-based approach to criminal justice responses;**

(b) **Ensure due implementation of victim and witness protection in the prosecution of cases of trafficking, before, during and after the trial in order to avoid reprisals;**

(c) **Ensure that the best interests of the child are at the heart of the criminal justice response in cases involving children;**

(d) **Continue strengthening the capacity of judicial officials to prosecute trafficking cases;**

(e) **Consider establishing specialized sections in criminal courts and prosecutors' offices in order to achieve better results in the repression of trafficking by trained judicial officials.**

91. **With regard to prevention:**

(a) Step up efforts to raise awareness about all forms of trafficking in persons, including for domestic servitude, forced labour and sexual exploitation, in order to promote understanding of what constitutes trafficking among the general population, the migrant community, refugees and asylum seekers, employers and employment agencies;

(b) Conduct surveys to assess the impact of the relevant awareness-raising campaigns, which should be extended to the whole country and especially to areas where there is a high concentration of persons in vulnerable situations. Moreover, awareness-raising material should be made available in multiple languages;

(c) Empower NGOs, including through increased interaction and the provision of funds, to conduct awareness-raising about trafficking and to handle complaints concerning trafficking;

(d) Consider opening up the labour market to refugees, asylum seekers and stateless persons in order to prevent the labour and sexual exploitation of those vulnerable groups.

92. With regard to the engagement of businesses:

(a) Raise awareness among the business community about human trafficking and encourage businesses to make and maintain a supply chain free from trafficking, including through the establishment of self-regulatory mechanisms and tools;

(b) Revise and enforce stringent regulations regarding employment agencies, regularly monitor the activities of those that are already licensed, and take immediate action to revoke their licences and prosecute them in cases where illegal action involving trafficking in persons has been found to have taken place.